



## **Metropolitan Police Department Performance Oversight Hearing**

March 2, 2018

The Amara Legal Center (“Amara”) provides free legal services to sex workers and survivors of trafficking, in all of DC’s 8 wards, with the majority of our clients coming from wards 6, 7, and 8. Since our founding in 2013, Amara has provided free legal services to over 390 clients. DC has a particularly acute need for legal services for individuals harmed while involved in commercial sex, whether that involvement was through choice, circumstance, or coercion. Although many believe that sex trafficking only occurs overseas or among foreign nationals, the vast majority of Amara’s clients are U.S. citizens who were born and raised in the DC metro area.

The specific legal needs of this population are great. Amara provides legal advice, partial representation, and full representation for the following types of civil legal issues: civil protection orders, divorce, child custody and support, name changes, living wills, and power of attorney cases. In addition to civil legal services, Amara also provides victim-witness advocacy services, criminal defense, and representation in criminal record sealing cases.

Involvement in the criminal justice system impacts most of Amara’s clients, regardless of the legal issues they are seeking to resolve. Involvement may come from being arrested for prostitution or solicitation<sup>1</sup>; arrests for drug use; mental illness that may precede, begin through, or be exacerbated by involvement in commercial sex; struggles with housing and homelessness; and a variety of crimes related to survival.

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<sup>1</sup> § 22–2701. Engaging in prostitution or soliciting for prostitution (there is no distinction in the law made between a buyer and a seller of sex and individuals who are selling sex are also charged with solicitation).

## **Pre-Arrest Diversion**

In late 2016, Amara began investigating options for a diversion program in DC that would serve sex workers and survivors of trafficking. Amara conducted focus groups with survivors, contributed questions to focus groups with sex workers, and began conducting a survey of diversion programs across the country. Through this effort, Amara learned that pre-arrest diversion programs are both favored and effective.

Amara commends the DC Metropolitan Police Department (“MPD”) for their willingness to begin a pre-arrest diversion program with the Department of Behavioral Health (“DBH”) and the Department of Human Services (“DHS”). As implemented in other jurisdictions across the country, pre-arrest diversion is a strategy to improve public safety and reduce human suffering by engaging with offenders of low-level crimes that are often borne of substance use and addiction, poverty, homelessness, circumstance, or mental health issues. Pre-arrest diversion approaches specific low-level criminalized activities with a public health response, instead of a typical criminal justice response. Rather than arresting individuals caught engaging in activities like prostitution, drug possession, or other low-level offenses, law enforcement connects these individuals to community service providers. By doing so, pre-arrest diversion programs address the underlying reasons an individual may be engaging in certain activities and at the same time, prevents them from incurring an arrest or conviction record that would leave them in a worse situation and lead to collateral consequences. pre-arrest diversion programs such as law enforcement assisted diversion (“LEAD”) are proven to reduce recidivism and costs to the criminal justice system. They work to combat the over-criminalization of communities for issues that stem from racism, poverty, addiction, or untreated mental illness.

### **Racially Conscious Diversion**

Not only are diversion programs effective in reducing recidivism and costs to the system, but they are one way to help combat a racially discriminatory criminal justice system. As of the 2016 Census, Washington, DC had a population of 681,170. Of that total, 47.7% of the population are black residents. According to the District of Columbia, Department of Corrections statistics from October 2017, 89% of inmates are black. According to data obtained from MPD, there were over 2,271 drug/paraphernalia arrests for possession in DC in 2016, excluding marijuana. Of those arrests, 1,918 (or 87.2%) were of black people. Amara takes the MPDs stated commitment to fair and equitable policing seriously and looks forward to seeing the MPD do its part to combat systemic racism. Consequently, Amara hopes that in developing the pre-arrest diversion program with DBH and DHS, effective methods are put in place to ensure that the program will be implemented equitably. Objective criteria, checks and balances, and implicit bias training are all examples of how to ensure the program is implemented equitably.

### **Eligibility for Pre-Arrest Diversion**

Amara is also hopeful that MPD will do its part to make the program as expansive as possible by engaging with the many intersecting communities impacted by crimes of circumstance. Many jurisdictions with pre-arrest diversion programs accept individuals who committed low-level drug offenses, prostitution, shoplifting, trespassing, other non-violent or victimless crimes, a crime with a victim who is willing to decline prosecution and the offense

was committed in relation to an alcohol, drug, poverty, homelessness, or mental health related need.<sup>2</sup>

Some jurisdictions are more expansive. For example, in Pinellas County, Florida, the program has a designated list of offenses that also include, possession of Alcohol Under 21, criminal mischief, misdemeanor assault (non-domestic), misdemeanor battery (no injuries or minor injuries and non-domestic), disorderly conduct, disorderly intoxication, and littering.

Expansive eligibility criteria is only one side of the coin. Amara is also hopeful that MPD will make the list of factors that could disqualify a participant as short as possible. Some jurisdictions have realized that charging fees for the program is counter productive. If they are diverting impoverished individuals, it makes no sense to request money from them to participate in the program.<sup>3</sup> Additionally, when working with individuals who may have had multiple contacts with the criminal justice system because of an underlying need, it is unhelpful to exclude them from a program that is meant to resolve their underlying need.<sup>4</sup>

### **Include Survivors of Trafficking in Pre-Arrest Diversion**

Amara is hopeful that MPD will include victims of sex trafficking in the diversion program. There are many survivors of sex trafficking in DC. Most survivors are arrested during

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<sup>2</sup> 2017 Report to Albany on the LEAD Program, [http://www.albanyny.org/Libraries/APD/2017\\_Albany\\_LEAD\\_First\\_Year\\_Report\\_-\\_FINAL-2.sflb.ashx](http://www.albanyny.org/Libraries/APD/2017_Albany_LEAD_First_Year_Report_-_FINAL-2.sflb.ashx), page 14.

<sup>3</sup> For example, in Fulton County, Georgia, the focus is on diverting individuals who engage in activities related to drug addiction, mental illness, or extreme poverty. They do not exclude the homeless, individuals with criminal records, and do not charge a fee for the program.

<sup>4</sup> Albany decided to remove the barrier to participation of an individual having outstanding warrants. In conversations with LEAD Baltimore, the coordinator indicated that it would be beneficial to have a more inclusive program. For example, programs should include individuals who are on a form of court ordered supervision, if they would otherwise be eligible for LEAD.

their exploitation. During their involvement in the criminal justice system, many survivors are not identified as victims and are then saddled with a criminal record that exacerbates their vulnerability to exploitation by decreasing their access to employment opportunities, higher education, and housing. Pre-arrest diversion programs are meant to be non-coercive and non-punitive. A properly functioning pre-arrest diversion program should not involve the courts and should merely connect individuals with services they need. This means that survivors of trafficking, who may not be initially identified as such, would be among the group of individuals to receive access to vital services. Their involvement in the program would not be punitive and they could accept or reject services as desired.

## **Conclusion**

There are some problems for which we cannot arrest our way out. The individuals who commit offenses because of vulnerable circumstances need addiction services, housing, mental health services, educational placement, and more. These are individuals who are already in vulnerable positions that would only become more vulnerable with arrest, fines, and jail time, which impact a person's ability to secure employment, housing, and other necessities. Studies show that participants in LEAD programs were 58% less likely than non-participants to be arrested.<sup>5</sup> They were also significantly more likely to obtain housing and employment subsequent to their participation in LEAD.<sup>6</sup> Jurisdictions, including Baltimore, have reports on how LEAD programs significantly reduced criminal justice costs.<sup>7</sup> From discussions with the Baltimore City

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<sup>5</sup> <https://www.leadbureau.org/evaluations>

<sup>6</sup> <https://www.leadbureau.org/evaluations>

<sup>7</sup> Baltimore LEAD Program One Pager, Behavioral Health System, Baltimore, February 2017 (“Criminal Justice costs and utilization declined by \$2,100 for LEAD participants, while control group participants’ costs increased by \$5,961.”).



LEAD Coordinator, Baltimore City residents in the LEAD pilot area also have significantly improved relations with law enforcement.

We ask that the DC Council and the Administration continue to support the creation of a pre-arrest diversion program facilitated by MPD, DBH, and DHS, especially efforts to meaningfully involve impacted communities and the organizations and advocates who serve them. We're excited to work with Chairman Allen and his staff and support survivors of human trafficking and sex workers. We are available at any time to answer any questions the committee may have.

Respectfully,

A handwritten signature in black ink that reads "Yvette Butler". The signature is written in a cursive, flowing style.

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