

Advancing Law Enforcement Assisted Diversion in North Carolina

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I. INTRODUCTION

As part of a national settlement agreement with opioid manufacturers and distributors, North Carolina will receive \$750 million to help fight the opioid crisis over 18 years beginning in 2022.¹ “These funds will be used to support treatment, recovery, harm reduction, and other life-saving programs and services in communities throughout the state.”² Pursuant to a memorandum of agreement (MOA) between the state and local governments, 85% of the North Carolina settlement funds will go to 100 counties and 17 municipalities. These funds present an unprecedented opportunity for local governments to improve their response to drug use. Among the “evidence-based, high-impact strategies”³ that localities can opt to pursue with the funds under the MOA are criminal justice diversion programs.⁴

The Duke University School of Medicine and the Wilson Center for Science and Justice at Duke Law (hereinafter collectively referred to as “Duke”) recently completed a multi-site evaluation of one such diversion program in North Carolina.⁵ Law Enforcement Assisted Diversion (LEAD) is a pre-arrest criminal justice diversion program for people who use drugs and are at risk of being charged with low-level criminal offenses that is rooted in harm reduction principles.

The evaluation concluded that LEAD participation was associated with promising criminal justice and service utilization outcomes among participants who actively engaged with LEAD staff. The evaluation also offers clear guidance for how programs can be strengthened to increase enrollment and participation and improve outcomes. While some of those recommendations pertain to things like eligibility criteria, which require no additional funding to change, many of the recommendations are resource dependent. Thus, this evaluation and its recommendations come at an opportune time, when North Carolina localities are well-positioned to bring LEAD to their communities using their opioid settlement funds.

¹ <https://ncdoj.gov/attorney-general-josh-stein-national-opioid-settlement-finalized/>

² <https://ncopioidsettlement.org>

³ <https://ncopioidsettlement.org/resources/>

⁴ <https://www.morepowerfulnc.org/wp-content/uploads/2021/10/Exhibit-A-to-NC-MOA-3.pdf>

⁵ CITE TO FINAL EVALUATION REPORT

II. WHAT IS LAW ENFORCEMENT ASSISTED DIVERSION (LEAD)?

LEAD was developed and first implemented in 2011 in Seattle, WA as a response to adverse effects of harsh criminalization of drug use and to reduce pervasive racial inequities in charges and arrests associated with drug use. It was the nation's first pre-arrest, pre-booking strategy to address unlawful conduct stemming from substance use and extreme poverty. LEAD has since been implemented in communities around the country, including in North Carolina. Pre-arrest diversion can be uniquely beneficial in that the diverted person avoids any record of their criminal justice encounter. Whereas with post-arrest diversion, even if the person successfully completes all aspects of the diversionary program, they will still have an arrest record.

As it was first designed, the LEAD model offers two referral pathways: arrest diversion and social contact referrals. Arrest diversions occur when an officer makes a referral in lieu of arrest for an individual who is actively engaging in low-level unlawful conduct at the time of their encounter. Alternatively, officers can offer a social contact referral to individuals they encounter who they believe to be at risk of criminal justice involvement driven by unmet behavioral health needs or chronic poverty, but at a time when there is no probable cause for arrest. In either situation, if the individual is eligible and interested, the officer makes a direct connection, or a "warm hand-off," to a LEAD outreach worker or case manager, who ideally responds to the location where the referral is taking place.

Next, the LEAD case manager and participant complete an initial intake assessment that identifies the participant's immediate needs and priorities. From that point, case managers consistently work with participants to identify and connect them to appropriate and locally available resources and support services, including food, essential medical services, short- or long-term housing, application for public benefits, harm reduction resources, and behavioral health services. As a participant-driven, harm reduction model, LEAD imposes no behavioral mandates on participants, except for requiring an initial intake and a signed release of information to enable communication among providers.

In 2020, in response to national demand for justice reform, a new iteration of the LEAD model was developed that enables a wider array of community stakeholders to refer people into LEAD without requiring officer involvement. Communities that are interested in implementing LEAD should consider this revamped version of the program, Let Everyone Advance with Dignity, as it has the potential to further reduce harm and creates additional pathways to resources for those in need.⁶

III. RESOURCES FOR LEAD IMPLEMENTATION

If you are interested in implementing LEAD in your community, the resources described below are available to assist.

⁶ For more information about the new version of the program, visit: <https://www.leadbureau.org>.

a. The LEAD Support Bureau

In 2016, the LEAD Support Bureau (LSB) was established to support communities in maximizing the value and impact of their LEAD programs. LSB offers technical assistance to jurisdictions around the country that are developing LEAD programs, using the following core principles that are essential to program success:

- focus on systemic change,
- focus on public safety,
- focus on racial justice,
- focus on harm reduction, and
- shared vision across stakeholder groups.

The LSB has many resources to help guide program implementation, policy, and practice, including a LEAD Fidelity Framework that reflects the recent model adaptations. These resources can be found at <https://www.leadbureau.org>.

b. North Carolina Harm Reduction Coalition

The North Carolina Harm Reduction Coalition (NCHRC) was instrumental in implementing LEAD in North Carolina. Since 2013, NCHRC has provided naloxone overdose response training to more than one-third of NC law enforcement departments. Moreover, NCHRC has experience partnering with police to create a post-overdose response team, wherein NCHRC outreach specialists help connect people to treatment and supportive services. In all four of the Duke LEAD evaluation sites, LEAD started as a collaboration between NCHRC, the local district attorney's office, local police department(s), one or more behavioral health services agencies, and the Local Management Entity/Managed Care Organization that is responsible for managing and disbursing the State's Medicaid and indigent-care funds for behavioral health services in that area. To contact the NCHRC or learn more about its resources, please visit www.nchrc.org.

c. Opioid Settlement Fund Resources

The Community Opioid Resource Engine for North Carolina has compiled resources to assist local governments to understand, access, and maximize their settlement funds. Those resources can be found here: <https://ncopioidsettlement.org/resources/general-support-resources/>.

IV. DUKE'S EVALUATION FINDINGS

In the four LEAD sites it studied, Duke found that LEAD had the most significant positive impact for participants who were well engaged with the program, as indicated by the level of contact with LEAD staff after referral to the program. Participants who had high level of contact with the LEAD staff had 1) fewer citations and arrests and 2) more outpatient behavioral health visits after their referral to LEAD as compared to participants who had very little or no engagement with the LEAD staff. Additionally, crisis-related service use

was lower among individuals enrolled in the program than what would have been expected if they had not enrolled.

All stakeholder groups involved with the programs, including program participants, strongly valued their LEAD programs, and many wanted to expand their programs' reach. However, stakeholders identified barriers to referral such as restrictive eligibility criteria and low awareness or buy-in to LEAD among some law enforcement officers. Once referrals were made, there were also barriers to enrollment in the program. Across the sites, on average, only 50% of individuals referred to the program went on to enroll. According to stakeholder interviews, warm hand-offs from referring police officers to case managers were not always possible, and thereby increased the chance that individuals would not follow up for an intake assessment at the case management agency within two weeks. Moreover, unclear messaging about program objectives may have led some prospective participants to believe wrongly that participation in treatment was required by the program.

Referrals and enrollments varied significantly by sociodemographic characteristics. Across the sites, women accounted for an average of 33% of LEAD-eligible drug charges in the community but received 52% of referrals and represented 60% of program enrollments. Across the jurisdictions served by the Duke program sites, Black individuals represented 30% of the community population, but they accounted for 44% of LEAD-eligible drug arrests in the community and only 14% of program referrals and enrollments.

Programs implemented LEAD using the resources they had, sometimes falling short of national recommendations for full-time dedicated LEAD staff doing field-based outreach. Staffing gaps and overburdened staff also posed challenges to engagement and other program operations.

Finally, individuals who were referred to LEAD via arrest diversion were more likely to enroll than those who had a social referral (referrals made for a person the officer believed could benefit from program services, in the absence of probable cause to make an arrest), but they were also somewhat less likely to have high level of contact with LEAD staff. This suggests that individuals who enroll in the program from a community-initiated pathway may be more likely to fully benefit from the program's resources.

V. EXPANDING AND IMPROVING LEAD IN NORTH CAROLINA

While Duke's evaluation found positive impacts for people who engaged with LEAD across all four sites, it also identified program challenges that should be addressed moving forward or in any new LEAD sites. Local governments should consider these recommendations as they consider the budget for their LEAD programs to ensure adequate resources are dedicated at the outset.

a. Racial equity

White women were disproportionately represented in referrals and enrollments at all four sites. This inequity may be due to the program eligibility criteria, officer discretion in whom to refer, or other factors. While the cause is undetermined, it is striking that white women had the best access to a program that was originally designed to reduce racial inequities. The North Carolina Opioid and Substance Use Action Plan 3.0 centers around equity and seeks to implement programs that reduce harm to historically marginalized people.⁷ Thus, it is imperative that North Carolina develop LEAD program plans that will address and minimize racial disparities.

LEAD programs should explicitly address racial equity in their policies and procedures and name racial equity as a goal of the program. To reach that goal, programs should develop an actionable plan for improving outreach to communities of color to raise awareness and trust of the program. The plan should also address strategies to reduce racial inequities in arrests and program referrals. Moreover, programs should engage community members in the process of creating the plan and involve local leaders and organizations who are also committed to addressing racial inequities in the sites' communities. Trainings and communications about LEAD should address racial equity as a program priority and advise stakeholders about ways to advance racial equity in their work.

b. Eligibility criteria

All four sites that Duke evaluated adopted program eligibility criteria that were more restrictive than the original eligibility requirements proposed by the LEAD program in Seattle. During the evaluation, a range of stakeholders reported wanting the eligibility requirements to be more inclusive of people in their communities who could benefit from LEAD, but were, at the time, ineligible. Moreover, the restrictive eligibility criteria may have contributed to racial disparities in referrals and enrollments.

While programs may tailor eligibility criteria to fit their local jurisdiction, they are strongly encouraged to set eligibility criteria that are equitable and that are as inclusive as possible. For example, the program should be available to those who are on supervised probation and any disqualifying past convictions should be set narrowly.

c. Training

Stakeholders from all Duke-evaluated LEAD sites reported wanting better awareness and buy-in to the program among law enforcement officers. In addition to lack of buy-in among some officers, there was also confusion among some officers regarding the expectations and goals of LEAD.

To improve program awareness and buy-in, every officer should receive training about harm reduction, substance use disorders, LEAD, and the value of pre-arrest diversion,

⁷ <https://www.ncdhhs.gov/opioid-and-substance-use-action-plan-data-dashboard>

including, as possible, outcomes from their jurisdiction's program. Refresher trainings should be given regularly on these topics. During program development, a trained LEAD officer or representative should provide the initial law enforcement training. Trainer options include trained LEAD officers from other sites and the National LEAD Support Bureau. Agencies are encouraged to develop their own internal trainers who can provide refresher trainings and field training throughout the course of the program. Quality, on-going training for entire police forces may require dedicated funding.

d. Staffing and hours

Consistent engagement with LEAD staff was associated with positive outcomes for LEAD participants. Yet, large caseloads and limited time to dedicate to working with program participants due to other work responsibilities contributed to staff not having the capacity to meet all participants' needs. Thus, each LEAD program should establish a maximum number of participants per caseload for full-time and part-time LEAD staff. This will help to avoid staff burnout and ensure that participant's needs are met.

Participants were most likely to enroll in the program when there was a warm hand-off from police to the program staff with the referral. To allow for a consistent process for warm hand-offs, there must be adequate resources and coverage such that either a LEAD case manager or LEAD-affiliated mobile crisis staff can arrive at the scene of the referral at all hours.

The LEAD National Support Bureau recommends LEAD programs have a full-time program manager that is independent from program agencies to help ensure that collectively developed program priorities and practices are sustained. However, none of the evaluated programs had available funding to hire a program manager. Future NC LEAD programs should consider using opioid settlement funds for a dedicated program manager who would support consistent implementation of program administration activities (e.g., acquiring funding and promoting LEAD in the community). A program manager could also work to address referral and engagement barriers that were identified in the Duke evaluation

Sufficient program funding should be dedicated to support staff salaries including for case managers, outreach workers, and the program manager.

e. Resources for participants

Essential to the LEAD model is the existence of community-based resources including food, medical services, housing, assistance with applying for public benefits, and behavioral health services. Thus, when a community is considering adopting LEAD, it is important to understand the resources currently available and ascertain whether there is adequate capacity to serve the target population. If there is a shortage in any of the service categories, then the community should consider using its opioid settlement funds to address that shortage, either as a precursor or in tandem with establishing LEAD.

Also, unreliable phone access has been reported to be a barrier to LEAD engagement. Thus, programs should consider using discretionary funds to pay for cell phone services for LEAD participants who are at high risk for disengagement.

f. Data collection

It is important for LEAD programs to have robust, consistent data collection. At the time of data collection for Duke's evaluation, the LEAD programs were only consistently tracking referrals to LEAD when the officer offered LEAD to someone who was eligible and that person accepted LEAD. This incomplete data hindered the ability to understand—and seek to reduce—gender and racial disparities in referrals and enrollment.

Thus, programs should track the demographics of 1) all persons offered a referral to LEAD, documenting their referral source (e.g., officer, social contact, or community), whether they accept the referral, and whether they decide to enroll; 2) people who officers wanted to refer but could not due to eligibility requirements; and 3) people charged with LEAD eligible charges but were never offered LEAD, documenting the officers' discretionary decision regarding whether or not to make a LEAD referral.

This data collection will require planning and training on the front-end before LEAD is implemented, including the development of certain forms. Model policies, forms, and memorandums of understanding are available through NCHRC or through other established LEAD sites. It will also necessitate a data analyst or other data-competent staff person who has dedicated bandwidth to working on collecting, storing, and analyzing LEAD data.

VI. CONCLUSION

As local governments across North Carolina consider the possibilities and begin to plan for the opioid settlement funds they will receive, they should consider the benefits that LEAD could bring to their communities. Pre-arrest, pre-booking diversion is in many ways the most effective form of diversion as it can prevent criminal system involvement in its entirety. And, importantly, the funding available through the settlement represents the potential to implement LEAD with fidelity to the model, by supporting sufficient staff, effective training, and robust data collection. Finally, interested jurisdictions should give careful consideration to program eligibility criteria and take other measures to help ensure racial equity in terms of which community residents are able to participate in and benefit from LEAD.