

Diversion from Justice: **A Rights-Based Analysis of Local** **“Prostitution Diversion Programs”** **and their Impacts on People in the** **Sex Sector in the United States**

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Yale Global Health Justice Partnership

The Global Health Justice Partnership (GHJP) is a program hosted jointly by Yale Law School and Yale School of Public Health that tackles contemporary problems at the interface of global health, human rights, and social justice. The GHJP is pioneering an innovative, interdisciplinary field of scholarship, teaching, and practice, bringing together diverse leaders from academia, nongovernmental, and community-based organizations to collaborate on research projects and the development of rights-based policies and programs to promote health justice.

The GHJP offers a practicum course each year that engages students in real-world projects with scholars, activists, lawyers, and other practitioners on issues of health justice. Working papers are produced as a part of these projects, with students as lead authors. Final papers reflect substantial input and revisions by GHJP faculty, partners, staff, and other readers.

Sex Workers Project of the Urban Justice Center

The Sex Workers Project provides client-centered legal and social services to individuals who engage in sex work, regardless of whether they do so by choice, circumstance, or coercion. One of the first programs in the nation to assist survivors of human trafficking, the Sex Workers Project has pioneered an

approach to service grounded in human rights, harm reduction and the real-life experiences of its clients. Our professional service providers are multi-lingual, non-judgmental and experienced, bringing more than ten years of experience.

As the only U.S. organization meeting the needs of both sex workers and trafficking victims, the Sex Workers Project serves a marginalized community that few others reach. We engage in policy and media advocacy, community education and human rights documentation, working to create a world that is safe for sex workers and where human trafficking does not exist.

Glossary

Triple A-Q model: The structurally-sound and accountable assurance of accessibility, availability, acceptability, and quality of healthcare, goods and social services, derived from the international human rights frameworks for the right to health.

CJS: Criminal justice system, sometimes also more critically termed the criminal legal system (to remove the implication that justice is done at all times and unequivocally).

Cultural competency: The ability of social service providers and administrators to meet the cultural, social and linguistic needs of individuals under care. This concept includes, therefore, an imperative to understand the ideological underpinnings of programming and the ways ideas, biases and stereotypes inform practice.

Diversion programs/processes: A wide-ranging set of practices embedded in the criminal justice system which claim to offer persons facing arrest, conviction, or detention from certain eligible offenses an alternative to arrest and/or incarceration (and the resulting criminal record) through some form of conditional support or services. They may arise pre-arrest, pre-booking, pre- or post-adjudication or sentencing. PDPs (see below) represent one strand of diversion processes.

Harm reduction: A set of respect- and health-based approaches and strategies for reducing risks to health and life for individuals engaged in practices, such as drug use or selling sex, which are often made risky because defined as criminal. Because “harm reduction” practices are evolved to meet the needs of the communities being served, there is no single set of practices governing them, but there is general agreement to uphold the certain principles, including: the need to be non-judgmental, a reliance on social science evidence, community participation in intervention development, a commitment to the empowerment of affected individuals to be primary agents of their lives, and a desire to integrate respect for universal human rights with and for affected communities.¹

Human trafficking: Under U.S. law (federal): the act of recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion, or if the person is under 18 years of age. Note that in U.S. trafficking law, movement into the sex sector and labor sectors are treated separately because sex work is not considered labor under U.S. law.

All U.S. states, beginning in 2003, have enacted their own versions of human trafficking laws with criminal penalties for traffickers seeking to profit from forced labor, in most cases distinguishing between general labor exploitation and what is termed "sexual servitude".² However, these laws vary radically across all the key elements of trafficking, including: who is defined as a “trafficker”, the statutory elements required to prove guilt in order to obtain a conviction, and the seriousness of the criminal and financial penalties those convicted will face.

¹ Harm Reduction International, “What is harm reduction?”, available at: <https://www.hri.global/what-is-harm-reduction>; Michael L. Rekart, “Sex-work harm reduction,” *The Lancet* 366.9503 (2005): 2123-2134.

² National Conference of State Legislatures, “Human Trafficking State Laws,” available at <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx>.

Intervention/post-adjudication programs: A subset of programs within the criminal justice system that aim to “rehabilitate” individuals for low-level or “quality of life” crimes after the adjudication process, the goal of “rehabilitation” being to make it possible for such individuals to either 1) avoid re-arrest/recidivism/revolving door of CJS engagement, criminal records, etc. and/or, 2) change their circumstances and/or practices toward more positive, avowed life goals.

Net-widening effect: Changes to criminal justice processes that result in more individuals coming under control, surveillance, or influence of the CJS.

Nordic model: A social and legal approach to sex work, now dominant in Nordic countries, in which only buying sex (not selling sex) is formally criminalized. It presumes that the seller of sex is a victim, and the buyer an abuser. It also postulates that criminalization as an experience is limited by the formal focus of the law (i.e., that because the seller is not a criminal they will not face police scrutiny and abuse, stigma and discrimination attached to illegal activity, etc.).

Prostitution diversion programs / processes (PDPs): Diversion programs (see above) that claim to move persons facing arrest, conviction, or detention from low-level prostitution offenses out of the purview of the CJS. We note here that the term “prostitution” in the PDP is derived slowly from the legal standard of prostitution offenses: the preferred term for many affected persons is “sex worker” or sex trade worker.

Post-booking programs: Diversion programs that intervene (e.g., provide social service contact referrals or treatments) after police booking and/or arrest.

Pre-booking programs: Diversion programs that intervene (e.g., provide social service contact referrals or treatments) before police booking.

Problem-solving courts: A family of courts that purportedly aim to address underlying causes of low-level crime in an attempt to reduce incarceration.

Some notes on terminology:

Throughout this report, we use the term “defendant/participant” when referencing individuals moving through PDPs. Whether an individual is considered a defendant or participant depends on their point of entry into the diversion program. For instance, “defendant” is employed to signal the reality of the criminal legal status of individuals who enter a PDP after being criminally charged for an offense. Many of those who enter post-booking may be doing so pursuant to a court mandate. In this context, the term “participant” is inaccurate given its implied voluntariness. However, because PDPs encompass a wide-ranging set of practices, for some programs, the point of entry is *before* an individual has been formally charged, as is the case for pre-booking/ pre-arrest programs that are not court-based. While these programs are still embedded within the penal framework of the criminal justice system and therefore are not free from coercion, the technical status of those who enter the programs is not that of a criminal defendant, and therefore, the term “participant” may be more apt.

Moreover, we note that contemporary PDPs have grown out of anti-trafficking advocacy that has often conflated trafficking with all sex work and has cast all sex work as exploitative and/or violent, regardless of circumstance. This “trafficking framing” is problematic and often descriptively untrue, as not everyone moving through PDPs meets the definition of a human trafficking victim: as such, the term “victim” is not used to describe individuals moving through PDPs in this report. Lastly, we use the term “criminal justice system” in this report as per general convention, but without the underlying assumption that the system is unequivocally just.

Executive summary

The past decade has seen a national rise in the promotion and establishment of “diversion” programs as alternatives to traditional criminal justice system pathways and processes. While the landscape of diversionary programming is rapidly evolving and dramatically varied, most programs are united by a rhetorical aim to move individuals who commit lower-level offenses away from incarceration and re-penalization and towards “rehabilitative” services. Most recently, this “divert and rehabilitate” logic has been applied to prostitution-related criminal charges, leading to the proliferation of what we aggregately refer to in this Working Paper as “prostitution diversion programs,” or PDPs. While progressive at face value, PDPs lack the evidence base and public accountability mechanisms to support their claims of doing good in the lives of people selling sex. In many cases, PDPs simultaneously position the sellers of sex as “victims,” but in fact embed their treatment in the criminal justice systems, thus seamlessly collapsing of all sex work into a sorely misguided trafficking frame while retaining coercive control of people in the sex sector. At the same time, the PDP approach avoids the harder and more important inquiries into why buying and selling sex ought to be criminal at all (absent other crimes), and why and if courts are appropriate bodies for assessing service needs and compelling therapeutic treatments.

Diversion from Justice: A Rights-Based Analysis of Local “Prostitution Diversion Programs” and their Impacts on People in the Sex Sector in the United States, by the Global Health Justice Partnership of the Yale Law School and School of Public Health, in cooperation with the Sex Workers Project of the Urban Justice Center-NYC, takes as its starting point a skepticism of criminal justice system involvement in the management and provision of social services, particularly when the communities forced into its gates – in this case, those engaged in the sex sector or presumed to be – are deeply marginalized and disempowered by the same state touting its beneficence. Our distrust is also linked to an overarching concern that the criminal law has shown little evidence of positive impact in the lives of sex workers, and that genuine progress in criminal justice reform is not possible without the complete decriminalization of sex work and associated activities.

Prostitution diversion programs present numerous challenges, both for sex workers stuck in the web of the criminal justice system and for researchers seeking to understand their implications in a systematic way. This Working Paper represents one of the most thorough attempts to date to make an account of the hyper-local, opaque, and poorly understood national trend toward prostitution diversion through building a provisional taxonomy for categorization as well as a justice-informed framework for evaluation.

The report is structured as follows:

- The **Introduction (Section I)** to this Working Paper situates PDPs in their broader political and social contexts, briefly outlining their historical evolution and beginning to trouble the ideological foundations upon which contemporary programs are laid. The Introduction makes clear the need for the present report: while the number of PDPs – and therefore the reach of the criminal justice system – continues to expand, there is an alarming dearth of information on their actual impacts on the health, rights, and dignity of defendant/participants.
- **Section II** of the report assembles a **national mapping and taxonomic scheme of PDPs** operating at the time of primary research in 2016, systematically categorizing the different practices, frameworks, and structures that comprise municipal PDPs across the U.S. This section sequentially lays out how PDPs operate on a logistical level, from program development and entry, to participation and service requirements, to exit processes. This cataloging of programmatic elements throws into sharp relief

the ways in which the term “PDP” masks what is actually an enormous diversity of very local, jurisdiction-driven processes that share little overlap in their operations. The lack of standardization and highly context-specific arrangements make these programs difficult to monitor, and therefore difficult to hold accountable with regards to potential injustices or harms to rights – or even to their own stated goals.

- **Section III** of the report proposes a **rubric by which PDPs can be evaluated** against their own goals, as well as against basic tenants of social justice that most purport to uphold. Our analytical review of PDPs and criminal legal provision of social services reveals that these programs often fail to uphold the human rights and dignity of defendant/participants given their intrinsically coercive design and implementation; that they do not consistently provide available, accessible, acceptable, and quality health and social services to sex workers, nor do they have the intentions and resources to meet the structural needs of sex workers; that they adjudicate in ad hoc and unreviewable ways that further entrench sex workers in court and criminal justice systems; and that they are not implemented in ways that are transparent, sustainable, and accountable to those most affected. To highlight some of the most egregious examples, we encountered programs that sought to monitor and control personal relationships, both intimate and familial, of defendant/participants; one where defendant/participants were required to perform unpaid labor (sell beer in sports stadiums) in exchange for the social service (in this case, housing); and another in which the PDP-affiliated service organization disguised their fundamentalist and religiously-charged rescue model in rhetoric of “freeing” women, but the materials make clear that freedom is defined by the organization’s understanding of the life God wanted for them.
- Finally, **Section IV of the report offers concluding remarks and a set of recommendations** for PDP reform, emphasizing the need for sustained research into localized practices, as well as internal reviews of each program with an eye towards radically minimizing the scope of criminal justice involvement. While the major inconsistencies across PDPs in the U.S. muddies any attempt at evaluating PDPs as a family of interventions, their shared positioning (as structural alternatives) within the criminal justice system triggers alarms regarding court overreach and compromised rights and well-being of sex workers, underscoring the need to shift power towards community-based and -led systems of accessing services.

This Working Paper, with its national scoping and analysis, should be read in conjunction with another similarly framed GHJP/SWP report entitled *Un-Meetable Promises: Rhetoric and Reality in New York City’s Human Trafficking Intervention Courts*, on the prostitution “diversion” courts in New York City known as “Human Trafficking Intervention Courts” (HTICs). Many of the analyses and concerns raised in the national survey are echoed and expanded in our analysis of practices in a single city setting. This complementary report can be found on the Yale GHJP website at: <https://law.yale.edu/ghjp>

Given the frequency with which new PDPs form and old ones disband, it is unlikely that the specific details of programs and other information we collected in 2016 and early 2017 are entirely up-to-date in fall 2018. Nevertheless, the implications of this research are enduring — and on-going conversations with people engaging with various PDPs around the country today suggest that many of the concerns we raise here remain as problems. It is our hope that the data and analysis presented below will be understood as a challenge to policymakers at all levels to clarify their goals, assumptions and tools so that their efforts do not become part of the problem of municipal revolving door criminal justice engagement. We hope our analysis is deployed in ways that mitigate the harms of PDPs and prompt a reexamination of our nation’s policies with regard to sex work.

Methodology

This GHJP Working Paper, *Diversion from Justice: A Rights-Based Analysis of Local “Prostitution Diversion Programs” and their Impacts on People in the Sex Sector in the United States*, is a culmination of a project (research, analysis and policy report) initiated in cooperation with the Sex Workers Project of the Urban Justice Center in 2016. We sought to map, describe, and catalogue prostitution diversion programs (PDPs) across the United States, within specified parameters and according to clear criteria.

1. Criteria for inclusion as a PDP

In this national survey, to warrant inclusion in our mapping and taxonomy, programs needed to be diversion programs or courts for adults (age 18+) that focused *specifically or substantially* on prostitution-related charges. The key parameters are generated by the ideas and ideologies associated with U.S. notions of buying and selling sex as a crime (prostitution). We note that not all of the programs included in this report characterized *themselves* or are appropriately characterized as “diversion” programs, as certain post-adjudication or probation-style programs are more properly defined as “intervention” programs.

However, we include these intervention/post-adjudication programs here because their approach uses rhetoric organized around ideas of the harms of prostitution and, thus, is associated with principles akin to those of the self-designated “diversion” processes: that is, both make claims to focus on “underlying causes” in order to help people avoid re-penalization for prostitution offenses, as well as claims to support the ability of persons selling sex to make significant changes in their lives, in part by (ostensibly) meeting the key needs of this population. These “intervention” programs often borrow the language and frameworks of diversion programs, and target prostitution- or prostitution-related charges in a way (provision of individual services, trauma counseling, etc.) that provides meaningful comparison and analysis in this mapping project.

Additionally, for the most part, we have not included general diversion programs that do not specifically address prostitution-related charges. The critical exception to this is our references to examples of pre-arrest and pre-booking programs (i.e., Law Enforcement Assisted Diversion (LEAD) started in Seattle and now replicated nationwide, and the Pre-Arrest Diversion (PAD) program being piloted Atlanta/Fulton County, GA). These programs do not exclusively (or, in the case of LEAD, meaningfully) engage with prostitution and related offenses, but are included in this analysis as counterpoints to largely court-based and prostitution law-specific programs due to their impacts on sex worker communities and their growing prominence in the harm reduction and criminal justice reform arenas [see Introduction for more information on the emergence, structure and potential implications of these models].

We also excluded diversion programs specific to persons buying sex (so-called john schools), or to minors arrested on prostitution-related charges (sometimes called “Safe Harbor” programs), as they employ different rationales and engage different populations from our focus.³

³ Sarah Wasch, Debra Wolfe, Elizabeth Levitan, and Kara Finck, *An Analysis of Safe Harbor Laws for Minor Victims of Commercial Sexual Exploitation: Implications for Pennsylvania and Other States*. (Pennsylvania: The Field Center for Children’s Policy, Practice & Research at the University of Pennsylvania, 2016), available at <https://fieldcenteratpenn.org/wp-content/uploads/2013/05/SafeHarborWhitePaperFINAL.pdf>.

2. Phases of research, analysis, and review

This project, carried out with approval by Yale University's Institutional Review Board that covered all academic and NGO researchers, was conducted in four phases. First, we used Internet searches and phone calls to local jurisdictions to locate PDPs (Phase I).⁴ Then, we conducted “deep dives” into as many of the programs identified in the first phase as possible (Phase II). We conducted in-depth phone interviews with PDP staff and service providers and also did site visits to observe these programs in session. Finally, we facilitated in-person, in-depth interviews with past program defendant/participants in several different locations (Phase III). We note here that introductions to the defendant/participants were in some cases facilitated by the PDP personnel, which may have introduced some degree of selection bias for defendants with favorable experiences or who successfully completed programs. In Phase IV, we assembled these interviews and analyses together and revised the report in light of a number of reviews (by SWP staff specifically; and in light of comments from participants from a December 2017 Roundtable on PDPs) and in tandem with desk research and revisions of the NYC HTIC report.

Parallel to these four phases, we also conducted interviews with fourteen key informants (a combination of scholars, advocates, and researchers) who could provide us with additional insight on their perspectives on and experiences with diversion programs in the United States.

Results of Phase I of our research, an initial online investigation in spring 2016, located 42 PDPs currently in operation across the country; four PDPs that were operational at one point but are now defunct; and at least two programs that are forthcoming. Thirteen additional programs are presumed operational, but we were unable to contact them. We compiled as much data as we could find on each program, including state, county, program name, program administrator, launch date, and a brief description current as of spring 2016 (Appendix I). Specific information from the New York PDPs was gathered over a similar period, but with a slightly different methodology, with reviews and updates into summer of 2018 (see GHJP report on NYC's Human Trafficking Intervention Courts).⁵

Initial research was conducted by GHJP students in a clinic course during the 2016 spring semester in conjunction with guidance by Sienna Baskin and Kate D'Adamo then of the SWP, and with additional guidance and research provided by Jessica Peñaranda of the SWP. We followed with further research, fieldwork, and analysis carried out by members of the original team through the summer and fall 2016. Ann Sarnak continued analysis and synthesis of data in collaboration with Shaylen Foley during spring and summer 2017, under the direction of Alice M. Miller. After drafting, this report was circulated for review to various stakeholders, activists, and academics involved in the project and subsequently revised through 2017 and 2018, with substantial revisions by Poonam Daryani. (See Acknowledgements for more detailed information on researchers, authors, and reviewers of this report).

⁴ The team aggregated online mentions of PDPs on county-level and state-level government websites, local news articles, blogs, and individual program websites, among other sources. Team members used combinations of the following search terms to identify PDPs in each state: (1) prostitution OR human trafficking, (2) diversion court OR program OR intervention OR problem solving. We placed phone calls to municipal court systems, local law enforcement, district attorneys, or partner community organizations to determine whether programs without recent news coverage were still operational.

⁵ Yale Global Health Justice Partnership, *Un-Meetable Promises: Rhetoric and Reality in New York City's Human Trafficking Intervention Courts* (New Haven, CT: Global Health Justice Partnership of Yale Law School and School of Public Health, 2018).

I. Introduction

1. Why this report

In light of burgeoning interest in and enthusiasm over “diversion” programs within criminal justice reform efforts, this report seeks to provoke a deeper analysis and reflection on the rapidly changing landscape of prostitution “diversion” programming (PDPs) nationwide. It should be noted that “diversion” programs, including PDPs, are positioned within broader and intensifying national concerns regarding over-policing, mass incarceration, poverty, race and racism, as well as the withdrawal of the welfare state under neoliberal theories of governance. However, often absent from these conversations is attention to the intersecting axes of race and gender, as well as in-depth attention to the systems and practices of mass misdemeanor arrests, municipal courts, and jails.⁶ While CJS policy and research has largely focused on felony convictions and incarceration, greater understanding is needed of the gender- and race-specific challenges faced by cis- and transgender women caught in cycles of surveillance and criminalization for low-level offenses – in this case, the selling or trading of sex.⁷

This report fills an analytical gap in policy analysis around PDPs by building a taxonomic language and justice-informed framework to systematically catalogue and assess these wide-ranging programs, while also recognizing an outstanding need for investigation into how ideologies surrounding race, gender, crime, victimhood, and “rehabilitation” interact in the sexualized penal context of prostitution offenses.

Despite the popularity of PDPs and their eager claims to positive impact on defendant/participant lives, little is known about the actual benefits and potential risks of these programs. At best, PDPs constitute an exercise in wishful thinking about the on-the-ground efficacy of diversion programming (since its evidence base remains largely lacking), and at worst a source of serious injustices and harms to rights and health (given that criminal courts may further entrench themselves in service and resource provision, compromising defendant/participants’ legal and social rights).

With this in mind, the present report aims to:

1. Provide a provisional mapping and analytical categorization (taxonomy) of PDPs across the U.S., documenting divergent practices across local jurisdictions,
2. Suggest a framework for PDP program evaluation in light of claims to health, human rights, and justice, and
3. Stimulate further research, as well as on-the-ground investigations and public policy critique, into localized PDP operations. In particular, some elements (such as the relationship to fees/funding; the interplay between misdemeanors and felonies, jails and prisons; and the intersections of

⁶ Elizabeth Swavola, Kristine Riley, and Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform* (New York: Vera Institute of Justice, 2016).

⁷ As Issa Kohler-Hausmann has noted, much of the current scholarship on the criminal justice system has focused on incarcerated populations and the consequences of felony convictions. However, data indicate that misdemeanor – not felony – arrests constitute the bulk of criminal cases given the rise in quality of life policing and urban crime control strategies that target low-level offenses. Importantly, unlike felonies, the majority of misdemeanor arrests do not result in carceral sentences or even criminal convictions, forming the basis of Kohler-Hausmann’s argument that we overlook and fundamentally misunderstand misdemeanor justice. She argues lower courts are not primarily concerned with adjudicating guilt, but instead operate under a “managerial model” that sorts and regulates people over time, resulting in significant and concerning discretionary differentiation in the treatment of defendants [see Issa Kohler-Hausmann, “Managerial Justice and Mass Misdemeanors,” *Stanford Law Review* 66.3 (2014): 611-694]. In this era of mass misdemeanor arrests, which has had a distinctly gendered impact, it is also evident that little is known about the gender-specific challenges faced by women entering the criminal justice system, a system dominated by policies and practices designed for cisgender men [see Swavola, Riley, and Subramanian, *Overlooked: Women and Jails in an Era of Reform*].

gender and race) have received far too little attention in the current surge of attention to policing and prisons in the U.S.

This macro-view of PDPs nationwide is complemented by a second GHJP/SWP report that chronicles through historical and sociological lenses one specific set of courts: the Human Trafficking Intervention Courts in NYC [see textbox below for summary].⁸ The contribution of the present report is a taxonomic scheme and framework for analyzing PDPs that can be used to examine individual programs in-depth, as was done in the HTIC-specific report.

Un-Meetable Promises: Rhetoric and Reality in New York City's Human Trafficking Intervention Courts

Researched and developed in parallel with the National PDP report as a complementary analysis, *Un-Meetable Promises* by the Global Health Justice Partnership in collaboration with the Sex Workers Project-NYC offers a deep dive into the genealogy, ideology, structure, and practices of NYC Human Trafficking Intervention Courts (HTICs), with particular attention to the provision of social services in coercive environments. Launched statewide in 2013 as judiciary-led initiative of the NYS Unified Court System, the HTICs are the latest iteration in a storied history of NYC's criminological responses to prostitution offenses. Following contemporary trends, the HTICs adopt a "problem-solving" approach to criminal adjudication of low-level prostitution offenses, claiming to "divert" individuals out of traditional criminal justice processes and into rehabilitative programming delivered through a service mandate.

While the courts are named "**Human Trafficking** Intervention Courts," in reality this is a mischaracterization that obfuscates their actual operations: the courts only address prostitution offenses and are not interested in actual trafficking victim status under the law or in other labor sectors (e.g., agriculture, construction, domestic, etc.). Moreover, to the extent that the courts deploy a rescue narrative that conflates sex work with trafficking such that all defendants become agency-less "victims", the conduct justifying the HTICs' existence continues to be criminalized, and those who participate are treated as criminals themselves, exposed to the often destabilizing and disempowering harms of CJS involvement. This fundamental contradiction is exemplified in the split structure of the courts: while being trafficked is a defense to a prostitution charge in NYS law, individuals must forgo this defense if they decide to enter the HTICs and must accept an adjudication of their *prostitution offense* as if a criminal defendant.

A second set of paradoxes emerges in the HTICs from their assertion to facilitate linkages to substantive rehabilitative social services. The service providers and defendants interviewed for the report expressed deep skepticism about the systems' ability to reliably and efficaciously provide services that are of sufficient quality and quantity to meet defendants' varied needs (which often include resource needs linked to structural inequities such as access to housing, health services and support for families). Moreover, stakeholders, advocates, and scholars alike shared concerns and were critical of social service delivery contingent on involvement in the coercive CJS, which is not only at odds with the professional ethics of service professions that prioritize client autonomy and informed consent, but also enables an overreach of the courts as gatekeepers and managers of services.

The report recognizes that the gulf between promise and delivery cannot be reconciled in the HTIC context without the decriminalization of sex work and the development of alternative community-informed systems of accessing social services. Instead, the report flags the contradictions and provides ideas for how key actors (primarily, the NYS Unified Court System and its public-private partner, the Center for Court Innovation) can reconsider their role and scope of involvement in order to reduce immediate harms to sex workers as individuals and as communities caught in oppressive structures and cycles of surveillance, policing, arrest, prosecution, diversion, and incarceration. For the full report, visit the Yale GHJP website at www.law.yale.edu/ghjp

⁸ Yale Global Health Justice Partnership, *Un-Meetable Promises*.

This national PDP report captures programs at one moment in time: because practices change rapidly, many of the specific features detailed in this report may have altered since our period of research in 2016. However, while certain elements of individual PDPs indeed have likely changed, the structural arrangements and constraints of so-called diversionary approaches to prostitution remain constant. Our provisional taxonomy and assessment framework make visible persistent features that will continue to merit serious attention, such as the:

- Ad hoc/personality-driven initiation and operations of “diversion” programming;
- Collapse of some of the ideas around trafficking into ideas about sex work, but in a parody of these commitments, such that those who sell sex are framed as “trafficking victims” in public rhetoric but in practice are treated as criminals by the legal system;
- Fundamental mismatch between (generally insufficient) services and needs of the populations sent through PDPs (a mismatch perpetuated by on-going lack of consultation and meaningful social work accountability to and by persons in the street-level sex trade sector);
- Questionable funding support and sustainability;
- Masking of coercive practices (e.g., police profiling and court surveillance); and,
- Misuse of the concept of “diversion” given that in all post-booking programs, defendants are in the midst of post-arrest adjudication practices, they are not diverted from criminal justice system engagement – at best, their detention may be held in abeyance.

Tying together all these concerns, the general use of “diversion” as a blanket term disguises radically varying practices on the local level: the various local courts use common terms but in practice deploy a disparate set of day-to-day practices, almost all unstudied, unverified and rarely accountable to larger justice principles or institutional review.

Our report is deeply informed by principles of human rights, dignity, and freedom, but our report is not a systematic legal analysis or documentation of rights violations. Instead, it aims to demonstrate the need for closer attention and keener analyses given the current wave of enthusiasm for diversion. We acknowledge the importance of reducing the extension of the criminal law over individuals and populations whose actions do not harm others, as well as expanding access to services. However, we sound alarm over the failure of diversion programs to meet the goals that they set for themselves and the dangers of embedding social services for an already stigmatized and materially-vulnerable population within a deeply compromised criminal justice system.⁹

Section II of this report will outline the findings of our national mapping and taxonomical analysis, and Section III will attempt to assess the programs we identified against common claims of PDPs. We end with some concluding remarks and a set of recommendations for PDP reform, weighing the possibility to create some opportunities for choice in an apparently “choice-less” system.

On a parallel note, we hope to situate this report within a larger ongoing conversation about whether or not the criminal law has any place in regulating the buying and selling of sex using a broader health and human rights framework. We recognize throughout our analysis that any attempt at programmatic reform must include simultaneous reflection on larger changes in how the exchange of sex for money is addressed by the criminal law. This paper seeks to keep a commitment on the importance of divorcing service provision from the court system to the maximum extent possible, while maintaining the

⁹ For more on this theme, see Corey Shdaimah, “Taking a Stand in a Not-So-Perfect World: What’s a Critical Supporter of Problem-Solving Courts to Do?” *University of Maryland Law Journal of Race, Religion, Gender & Class* 10 (1010): 90.

importance of the complete decriminalization of sex work and reinvestment of resources in community-based organizations that may serve persons in the sex trade – by choice, circumstance or coercion – according to their needs and rights. All the while, we must engage with persons facing arrest more justly, comprehensively, and ethically.

2. The rhetoric and reality of diversion in the U.S. criminal context¹⁰

Over the past decade, diversion programs have increasingly been promoted as an alternative to the traditional pathways of arrest and entry in, incarceration, and exit from the United States' criminal justice system. Diversion programs go by many different names (e.g., specialty courts, first-offender programs, deferred prosecution), but all have the primary goal of funneling low-level offenders away from jail and into "rehabilitative" or alternative programming.¹¹ In the past, diversion programs have typically been offered to juvenile offenders and individuals with severe mental health issues, alcohol and drug disorders, or special populations like veterans. In some of these programs, once the defendant/participant meets certain conditions or sanctions, the judge or prosecutor will often dismiss or reduce their charges, or if the individual has been sentenced, will remove convictions from records.

Diversion programs, in this sense, are part of a larger national "problem-solving" trend in criminal justice reform, one that has developed parallel to an ever-intensifying system of mass incarceration that disproportionately affects low-income people and communities of color. Problem-solving courts purport to grapple with social concerns, allowing informal court processes to address underlying causes of low-level crimes rather than the specific crimes charged.¹² As part of this logic of "problem-solving," courts become specialized in specific areas such as intimate partner violence or mental health; in this model, judges gain wide discretion as "active participants" rather than "passive arbiters" in adjudication.¹³

The impulse toward diversion as an alternative to incarceration is undergirded by several material and ideological factors, ranging from budgetary concerns to morality-, social science-, and justice-based claims.¹⁴ While the motivations driving the creation of diversion programs often appears to be generous and progressive, the implementation of diversionary programming calls into question its ability to truly "divert" individuals from the criminal justice system. One set of concerns "follows the money" to note that some programs demand fees out of proportion to services, and/or in ways that place poor defendants in further jeopardy of higher penalties.¹⁵ Importantly, such programs may ultimately have intended and unintended consequences on the rights and well-being of intended beneficiaries.¹⁶

¹⁰ Legal scholar Mae C. Quinn identifies the chasm between rhetoric and reality of modern court reform movements, encouraging "more meaningful discussions about judicial experiments." Mae C. Quinn, "The Modern Problem-Solving Court Movement: Domination of Discourse and Untold Stories of Criminal Justice Reform," *Washington University Journal of Law & Policy* 31 (2009): 57-58.

¹¹ Stephanie Wahab, "Evaluating the Usefulness of a Prostitution Diversion Project," *Qualitative Social Work* 5.1 (2006): 67-92.

¹² Quinn, "The Modern Problem-Solving Court Movement," 59.

¹³ *Ibid.*

¹⁴ Illinois-based Treatment Alternatives for Safe Communities describes the following reasons for the national turn toward diversion: "[...] overburdened courts, crowded jails and prisons, strained government budgets, advances in the science of drug use [and mental health] intervention and recovery, shifting public sentiment about drug [and mental health] policy, awareness of the negative and residual impacts of justice involvement on families and communities, and a preponderance of research on the effectiveness and cost efficiency of alternatives to incarceration." Center for Health and Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (Chicago: 2013), available at

http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf.

¹⁵ Shaila Dewan, "Caught With Pot? Get-Out-of-Jail Program Comes With \$950 Catch," *New York Times*, 14 Aug. 2018, available at <https://www.nytimes.com/2018/08/24/us/marijuana-diversion-program-maricopa-arizona.html>.

¹⁶ Shdaimah, "Taking a Stand in a Not-So-Perfect World."

Despite most diversion programs' claims to empiricism, there is, in practice, a dearth of reliable evidence collection and analysis.¹⁷ Demonstrating the impacts of these programs worldwide is therefore difficult, whether measured by recidivism rates, clinical benefits, or more qualitative assessments of psychosocial health.¹⁸ Neither the efficacy nor rights-protecting dimensions of diversion are well-substantiated, yet these programs are nevertheless deployed to address a widening pool of low-level offenses, often those with high public visibility. Moreover, while people of all genders, races, national origins, and social strata engage in sex work, who ends up in PDPs may be more representative of who "looks like a sex worker", which includes communities subject to profiling, over policing, and criminalization. While this report does not include original data on the socio-demographics of persons entering PDPs, there is reason to believe that police discretion and understandings of gender, race, and place matter in determining the makeup of defendant/participant populations in certain jurisdictions, especially because police are often the point of entry into the criminal justice system.¹⁹ Most of the programs we examined do not address diversity of gender within their programs or engage with questions of racialized impacts or possible collateral immigration consequences for non-U.S. citizens.

This report thus takes as its starting point the tension between public rhetoric about "diverting" offenders away from incarceration into services, on one hand, and the actual provision of those services, on the other, with a specific concern for practices with on-the-ground effects that may threaten the human rights, welfare, and dignity of recipients. Among the key themes arising in this report are the dangers of the conflation of "trafficking" with all prostitution offenses (and the often deep ambivalence about whether persons in the sex trade are in fact "victims" or criminals); and the dangers of making the courts the gatekeepers and managers of social services to marginalized communities passing through the courts as defendants. In both these concerns, the criminal law and the key actors operating at municipal levels (police, judges, and local court services) play unaccountable, outside, and inappropriate roles.

3. "Diversion" programs, prostitution-focused court processes and sex work

Across the country, the logic of pre-adjudication diversion and post-adjudication intervention is most recently applied in the case of prostitution-related criminal charges, in what are aggregately referred to in this report as prostitution diversion programs (PDPs). However, specialty courts that adjudicate cases for individuals charged with a prostitution-related crime (usually at the misdemeanor level) are not novel tools in the world of American criminal law. The earliest prostitution-specific court, the New York City's Women's Court, was established in 1910, though it was ultimately abolished in 1960 amidst allegations of maltreatment, corruption and general inefficacy.²⁰ Other courts, especially in the New York City area,

¹⁷ The Center for Court Innovation, developed in the 1990s as a public-private partnership with the New York State Unified Court System, has been at the forefront of the development of diversion programming. In its explanation of the six core principles in "problem-solving justice," CCI recommends that problem-solving courts be "rooted in research and the knowledge of experts outside the courtroom." However, as discussed later in the "critical review" section of this Introduction, data on the effectiveness of these courts is ambiguous at best. For more on the absence of strong empirical evidence with regard to problem-solving courts, see Joanne Csete and Denise Tomasini-Joshi, *Drug Courts: Equivocal Evidence on a Popular Intervention* (Washington, D.C.: Open Society Foundations, 2016).

¹⁸ J. Nuffield, *User Report: Diversion Programs for Adults* (Ottawa: Ministry of the Solicitor General of Canada, 1997); Scot Wortley, Benedikt Fischer, and Cheryl Webster, "Vice Lessons: A Survey of Prostitution Offenders Enrolled in the Toronto John School Diversion Program," *Canadian Journal of Criminology* 3.3 (2002): 227-48; Wahab, "Evaluating the Usefulness of a Prostitution Diversion Project"; US Government Accountability Office, "Adult drug courts: Studies show courts reduce recidivism, but DOJ could enhance future performance measure revision efforts," (Washington, D.C.: GAO, 2011), available at <http://www.gao.gov/assets/590/586793.pdf>; Eric L. Sevigny, Brian K. Fuleihan, and Frank V. Ferdik, "Do drug courts reduce the use of incarceration?: A meta-analysis," *Journal of Criminal Justice* 41.6 (2013): 416-425; Anne Dannerbeck, Gardenia Harris, Paul Sundet, and Kathy Lloyd, "Understanding and responding to racial differences in drug court outcomes," *Journal of Ethnicity in Substance Abuse* 5.2 (2006): 1-22; UK Drug Policy Commission, "Reducing drug use, reducing reoffending: Are programs for drug-using offenders in the UK supported by the evidence?" (London: UKPDC, 2008).

¹⁹ Meredith Dank, Jennifer Yahner, and Lilly Yu, *Consequences of Policing Prostitution: An Analysis of Individuals Arrested and Prosecuted for Commercial Sex in New York City*. (Washington, DC: Urban Institute, 2017), available at <https://www.urban.org/sites/default/files/publication/89451/consequences-of-policing-prostitution.pdf>.

²⁰ Mae C. Quinn, "Revisiting Anna Moscovitz Kross's Critique of New York City's Women's Court: The Continued Problem of Solving the 'Problem' of Prostitution with Specialized Criminal Courts," *Fordham Urban Law Journal* 33 (2006): 665.

emerged later on in the century to address so-called “quality of life” or “vice” crimes like prostitution.²¹ [For a more thorough genealogy of prostitution “diversion” in NYS, see the GHJP report on NYC’s HTICs.²²]

Contemporary PDPs have each been influenced by their own local court legacies, but also by the more recent national rise of anti-trafficking advocacy in the U.S and globally since the mid-to-late 1980s. For instance, many existing PDPs have rhetorically recast all persons exchanging sex for money as victims rather than criminals, regardless of circumstance.²³ Many anti-trafficking advocates have collapsed all participation in the sex trade underneath the category of “sex trafficking,” whether or not coercive acts have taken place.²⁴ In their efforts to 1) divert sex workers from the traditional pathways of the criminal justice system and 2) facilitate sex workers’ exit from “the life” (i.e., sex work itself), many PDPs explicitly employ a narrative of rescue, and understand themselves to be “saving” sex workers from prostitution.²⁵

Contemporary understanding of trafficking

Within mainstream transnational global women’s rights, at the end of the 20th century, attention to “sex trafficking” drove a new conversation on “trafficking” as both slavery and violence against women, raising it as an international problem from the mid-1990s to today. The side-by-side (but distinct) adoption in 2000 of the U.S. Trafficking Victim Protection Act (TVPA/TVPRA) and the UN Trafficking Protocol reflects the high level of attention at national and global levels.²⁶ Public awareness campaigns against international human trafficking helped put the issue on the political docket at the state level. Beginning in 2003, all U.S. states have enacted their own versions of human trafficking laws with criminal penalties for traffickers seeking to profit from forced labor, in most cases distinguishing between general labor exploitation and what is termed “sexual servitude”.²⁷ However, these laws vary radically across all the key elements of trafficking, including: who is defined as a “trafficker”, the statutory elements required to prove guilt in order to obtain a conviction, and the seriousness of the criminal and financial penalties those convicted will face.

The national and state laws relied on a narrative of an innocent “victim” in order to distinguish trafficked persons (worthy of help) from criminals (unworthy), and to justify not only the provision of services, but the possibility of a visa and path to citizenship in the case of the U.S. TVPRA.²⁸ The stories and responses notably also only presented cisgender women as the prototypical victim in prostitution, so that the presence of trans women or men selling sex were made invisible.²⁹

Thus, today’s PDPs are not merely a new iteration of “problem-solving” adjudication modeled after drug, domestic violence, or veteran courts—though they do share several procedural and structural similarities

²¹ Aya Gruber, Amy J. Cohen, and Kate Mogalescu, “Penal Welfare and the New Human Trafficking Intervention Courts,” *Florida Law Review* 68 (2016): 1-73; Amy J. Cohen, “Trauma and the Welfare State: A Genealogy of Prostitution Courts in New York City,” *Texas Law Review*, *Ohio State Public Law Working Paper*, no. 379; Quinn, “Revisiting Anna Moscovitz Kross’s Critique of New York City Women’s Court.”

²² Yale Global Health Justice Partnership, *Un-Meetable Promises*.

²³ Lex Talamo, “Diversion Program Offers Prostitutes a Way out of the Life,” *Shreveport Times*, 11 March 2016, accessed 26 April 2016, available at <http://www.shreveporttimes.com/story/news/2016/03/11/diversion-program-offers-prostitutes-way-out-life/81102044/>; JJ Hensley, “Phoenix Diversion Program Gives Prostitutes Promise of New Beginning.” *AZ Central*, 18 Oct. 2013, accessed 26 April 2016, available at <http://archive.azcentral.com/community/phoenix/articles/20131011phoenix-program-prostitutes-new-beginning.htm>; Erika Aguilar, “LA Officials Announce Anti-prostitution Efforts in the Valley,” Southern California Public Radio, 25 Feb. 2014, accessed 26 April 2016, available at <http://www.scp.org/news/2014/02/25/42450/los-angeles-offers-new-programs-to-curb-prostituti/>; Editorial Staff, “Best way to rescue victims of sex trafficking: diversion program, not jail,” *Bradenton Central*, 26 March 2015, accessed 23 Aug. 2018, available at <http://www.bradenton.com/opinion/editorials/article34868139.html>.

²⁴ Cohen, “Trauma and the Welfare State.”

²⁵ Confidential interview with key informant. 1 March 2016.

²⁶ Alicia Peters, *Responding to Human Trafficking: Sex, Gender, and Culture in the Law* (Philadelphia: University of Pennsylvania Press, 2015); Alice Miller and Tara Zivkovic, “Orwellian Rights and the UN Trafficking Protocol,” *Routledge Handbook of Human Trafficking*, Ryszard Piotrowicz, Conny Rijken, and Baerbel Heide Uhl (eds.) (New York: Routledge, 2017).

²⁷ National Conference of State Legislatures, “Human Trafficking State Laws.”

²⁸ Peters, *Responding to Human Trafficking: Sex, Gender, and Culture in the Law*; Janie A. Chuang, “Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy,” *University of Pennsylvania Law Review* 158.6 (2010): 1655-1728.

²⁹ The Urban Institute found that 5% of individuals arrested for sex work across the boroughs of NYC identify as transgender [see Dank, Yahner, & Yu, *Consequences of Policing Prostitution*, 6].

with these courts. Notably, PDPs are uniquely shaped by very specific and ideologically-based concerns about ideas about “harm to women” arising out of sexual transactions.³⁰ For this reason, current evaluations and critiques of the “problem-solving” movement in criminal justice reform, including concerns about racism and poverty, while essential to our analysis, do not fully capture all of the specific issues arising out of the regulation of gender and sexuality, including as they intersect with race. Our report aims to supplement existing literature on diversion programming by addressing the particularities of the criminal justice system’s varying and uneven approach to sex work.

The emergence of pre-arrest and pre-bookings “diversion” programs nationally

Distinct from prostitution-focused court processes, beginning around 2011, a wave of pre-arrest and pre-bookings “diversion” programs have emerged nationwide as a strategy to mitigate harms associated with criminal justice system involvement.³¹ As noted in the Methodology section, models for such programs include Law Enforcement Assisted Diversion (LEAD)³² as well as the Pre-Arrest Diversion (PAD)³³ initiative being piloted in Atlanta/Fulton County, GA. Pre-arrest and pre-bookings programs claim to be community-based approaches informed by harm reduction philosophies. If developed and implemented with these harm reduction principles, including the participation of the most affected in their design, implementation and evaluation, these programs have some promising elements.

LEAD is a pre-bookings and harm reduction-oriented program primarily addressing low-level drug offenses and targeting substance users facing arrest for their street presence. The program started in King County, Seattle in 2011, and since then, the model has been expanded to several cities across the U.S., and a LEAD National Support Bureau has been established to provide strategic guidance and technical assistance to new jurisdictions considering LEAD. While some LEAD materials (from both the flagship Seattle LEAD program³⁴ as well as the LEAD National Support Bureau³⁵) include prostitution offenses within its scope of program eligibility, in its current iteration, the Seattle program and the National Support Bureau do not meaningfully engage with prostitution offenses nor the needs and experiences of those engaged in the sex trade sector.

The LEAD model commands a great deal of attention in U.S. policy and program design as a pre-bookings “diversion” program and is being considered for adoption by local jurisdictions throughout the country, with or without its core pre-conditions, actors and components. For this reason, we include references throughout to LEAD (and specifically, the Seattle program) as an emergent alternative to the largely court-based and prostitution law-specific programs, but do not focus on it substantially as a site for in-depth case study. In comparison, the PAD initiative being piloted in Atlanta/Fulton County is a pre-arrest program that has learned from the Seattle LEAD model and adopted some of its elements, but its origins, design process, as well as harm reductionist and housing first approach have centered the leadership and needs of sex worker communities and have explicitly aimed to transform harmful policing practices.³⁶ In fact, PAD was conceived through a grassroots organizing campaign led by transgender women and the Solutions Not Punishment Coalition against a banishment ordinance targeting sex workers in Midtown Atlanta. For this reason, we include the PAD initiative as an example of a program that has its roots in

³⁰ Gruber et al., “Penal Welfare and the New Human Trafficking Intervention Courts.”

³¹ LEAD (Law Enforcement Assisted Diversion) King County, “About LEAD,” available at www.leadkingcounty.org/about/.

³² LEAD National Support Bureau, “What Is LEAD?,” available at www.leadbureau.org/.

³³ Atlanta/Fulton County Pre-Arrest Diversion Initiative, “Home,” available at prearrestdiversion.org/.

³⁴ LEAD King County, “About LEAD.”

³⁵ LEAD National Support Bureau, “What Is LEAD?”

³⁶ Atlanta/Fulton County Pre-Arrest Diversion Initiative, “Home”; Atlanta/Fulton County Pre-Arrest Diversion Initiative, “Operational Protocol Version 1.0,” 2017.

community organizing and has intentionally sought input and direction from sex worker and other affected groups.

These models differ from most other PDPs, which generally focus on prostitution-law offenses and offer diversion only after an arrest has been made/charges filed. The offenses eligible for diversion in pre-arrest and pre-booking programs are generally street-level petty offenses, or “violations driven by unmet behavioral needs”, such as those associated with drug use, mental health and poverty.³⁷ While prostitution offenses are included as divertible offenses in some programs (particularly PAD in Atlanta/Fulton County), as a whole pre-arrest and pre-booking programs do not meaningfully engage with sex workers as impacted individuals and communities.

While pre-booking models claim to interrupt cycles of criminalization earlier than post-booking programs, they still operate within the framework of the criminal justice system by making police officers gatekeepers to social services and bestowing them with wide discretion and authority in determining who to divert. For instance, in the LEAD model, police officers are generally given discretionary authority at point of contact (arrest) to divert individuals who commit low-level offenses to case management and trauma-informed social services, in lieu of traditional prosecution and criminal justice proceedings.

4. Evaluating PDPs in the U.S.

Like their drug diversion counterparts, PDPs are frequently portrayed as a part of a line of progressive innovations in criminal law, with stories of “success” and “saved lives.”³⁸ However, scholars, advocates, funders and activists have recently begun to probe the veracity of such narratives. Many have suggested that despite *apparent* diversion from incarceration, PDPs actually result in increased criminal surveillance, decreased procedural protections, and increased incarceration in some cases.³⁹

We know strikingly little about the evolving landscape of PDPs because the bulk of enforcement of prostitution misdemeanor and/or charges fall to the state or county level.⁴⁰ The nature of the American criminal justice system means that localities handle prostitution and other criminal charges through very local, jurisdiction-specific processes, whose components are frequently informally negotiated and hard to monitor. There may be benefits to diversion and other interventions operating at such a local, and context-specific level. However, the opacity with which many local jurisdictions function suggests the possibility that no one fully understand how PDPs are actually running and what influences their accountability to various stakeholders. The “muddy waters” of PDPs obscure practices which may challenge rights, as well health. Furthermore, information about PDPs is often not made available to the public, and states and localities frequently lack uniform standards for data collection or dissemination of information. As a result, it difficult to assess these programs with regard to rights, health, and welfare, or even in light of the PDPs’ own stated goals.

The limited amount of research that exists on PDPs is deeply ambiguous. Some studies have demonstrated impacts of PDPs according to limited and often quite ideologically fraught parameters and

³⁷ LEAD National Support Bureau, “What Is LEAD?”

³⁸ Mae C. Quinn, “The Modern Problem-Solving Court Movement: Domination of Discourse and Untold Stories of Criminal Justice Reform,” 31 *Washington University Journal of Law and Policy* 57 (2009): 57-82.

³⁹ Cohen, “Trauma and the Welfare State”; Shdaimah, “Taking a Stand in a Not-So-Perfect World”; Shaila Dewan, “Caught With Pot? Get-Out-of-Jail Program Comes With \$950 Catch.”

⁴⁰ Of course, there is some federal policy and funding that guides some regulation of prostitution, e.g., through the Trafficking Victims Protection Reauthorization Act of 2008.

measures.⁴¹ Quantitative analyses of radically different but allegedly “diversionary” programming in Phoenix (Project Rose, post-booking) and Seattle (LEAD, pre-booking), for instance, have both produced materials showing statistically significant reductions in recidivism among defendant/participants even though their program models differ greatly, with Phoenix’s program using arrests to *compel* services and Seattle LEAD’s program explicitly seeking to *avoid arrest* in moving people to services.^{42,43} Notably, Seattle’s program has built in a process which is producing independent evaluations (e.g., researchers at the University of Washington have conducted several of the evaluations), while Phoenix’s program evaluation was internally self-generated. Neither program to our knowledge considers points of evaluation such as net-widening or other unintended external efforts, nor defendant/participants’ sense of dignity, worth and rights.

Some reports from PDPs, including our own interviews, suggest gratitude for the opportunity to access services and develop relationships with service providers [See Section III: 4.2]. However, these expressions of individual appreciation, while individually compelling and notable, also obscure the structural context, a feature that emerges as one of the more problematic foundations of diversion programs, which deliver services within the opaque and unaccountable practices of municipal criminal justice systems. Assessments that do not probe the *context* for service delivery in this way may fail to ask whether services being offered actually meet the structural and long-term needs of the defendant/participants, in addition to giving them some sense of respectful treatment, which ought to be a given in any court program. This myopia may fail to account for abuses that result when the criminal justice system acts as a gatekeeper to services. At minimum, we need a more comprehensive, transparent, rights-informed rubric for evaluation.

Following the lead of a number of scholars and activists, this report explicitly questions the need and justification for criminal justice involvement to distribute and enforce the dispensing of social services and other resources.⁴⁴ A 2012 survey of nineteen prostitution-specific court programs identified that a major challenge in reforming PDPs was the prevailing negative perception of transactional sex among local residents, court staff, and even social service providers.⁴⁵ More specifically and troublingly, the collusion

⁴¹ For example, evaluations using metrics such as program completion rate or rate of re-arrest have been conducted on programs in Salt Lake City, Baltimore and Philadelphia, Phoenix and Seattle (though not prostitution-charge specific). For more, see Corey Shdaimah and Marie Bailey-Kloch, “Can You Help with That Instead of Putting Me in Jail?: Participant Insights on Baltimore City’s Specialized Prostitution Diversion Program,” *Justice System Journal* 35.3 (2014): 287-300; S. Chrysanthi Leon and Corey S. Shdaimah, “JUSTifying Scrutiny: State Power in Prostitution Diversion Programs,” *Journal of Poverty* 16.3 (2012): 250-73; Dominique E. Roe-Sepowitz, James Gallagher, Kristine E. Hickie, Martha Pérez Loubert, and John Tutelman, “Project Rose: An Arrest Alternative for Victims of Sex Trafficking and Prostitution,” *Journal of Offender Rehabilitation* 53.1 (2014): 57-74; Dominique E. Roe-Sepowitz, Martha P. Loubert, and Tom Egan, “Adult Prostitution Recidivism-Risk Factors and Impact of a Diversion Program,” *Journal of Offender Rehabilitation* 50 (2011): 272-85; LEAD King County, “LEAD Evaluation,” available at leadkingcounty.org/lead-evaluation/.

⁴² In Arizona, significant differences in 12-month recidivism were found when individuals who fully completed the program were compared to individuals who only completed the intake or a portion of the program requirements. Recidivism and completion were found to be associated with active substance use, childhood abuse, and a prior history of arrest for prostitution (Roe-Sepowitz et al., *Adult Prostitution Recidivism*, 279). The other article on the Phoenix program did not find significant differences in recidivism between participants and non-participants (Roe-Sepowitz et al., *Project Rose*, 66). Moreover, the Phoenix program (Project Rose) has faced significant criticisms for ties to coercive practices (Ksenia Maryasova, “Project ROSE Aims to Change Lives, Traumatizes Sex Workers Instead, Critics Say,” *The State Press*, 14 Oct. 2014, available at <http://www.statepress.com/article/2014/10/project-rose-aims-to-change-lives-traumatizes-sex-workers-instead-critics-say/>).

⁴³ The 2017 evaluation of Seattle’s LEAD program effect on recidivism outcomes showed that, as compared to controls, LEAD participants had 60% lower odds of arrest during the six months subsequent to evaluation entry; and both a 58% lower odds of arrest and 39% lower odds of being charged with a felony over the longer term (Susan E. Collins, Heather S. Lonczak, and Seema L. Clifasefi, “Seattle’s Law Enforcement Assisted Diversion (LEAD): program effects on recidivism outcomes,” *Evaluation and Program Planning* 64 (2017): 49-56.). To date, several evaluations have been released of Seattle LEAD, including: 1) Program effects on recidivism outcomes (two reports, the first released in April 2015 and the second in October 2017), 2) Participants’ experiences with LEAD case management (November 2016), 3) Participant Housing, Employment, and Income Outcomes (May 2016), and 4) Criminal Justice and Legal System Utilization and Associated Costs (June 2015) (LEAD, “LEAD - LEAD Evaluation”).

⁴⁴ Leon and Shdaimah, “JUSTifying Scrutiny: State Power in Prostitution Diversion Programs,” 269-270; Shdaimah, “Can You Help Me With That Instead of Putting Me in Jail?” 298; Wahab, “Evaluating the Usefulness of a Prostitution Diversion Project,” 89.

⁴⁵ D. Mueller, *Treatment Courts and Court-Affiliated Diversion Projects for Prostitution in the United States* (Chicago: Chicago Coalition for the Homeless, 2012).

between police and social workers in the Phoenix Project Rose program described above has been described by social workers as a form of “structural violence” against minorities that violates social work ethical standards of the field.⁴⁶ Advocacy organizations like the Red Umbrella Project have criticized PDPs in New York City for discriminatory policing practices that over-criminalize racial and ethnic minorities and have questioned how court-mandated services could address the economic hardships faced by many in the sex trade.⁴⁷ Others have argued that the process of nesting service provision within the criminal justice system constrains systematic changes to welfare assistance, placing responsibility on individuals, and blurring the line between “care and coercion.”⁴⁸

Given the gap between rhetoric and reality vis-à-vis diversion programming in general, the problems generated by the criminal regulation of sex work, and the need for more health and rights-informed program evaluation of PDPs, this report seeks to unpack, name and analyze the tensions and contradictions embedded in this system of “penal welfare”.⁴⁹

⁴⁶ Wahab, "Evaluating the Usefulness of a Prostitution Diversion Project."

⁴⁷ Audacia Ray and Emma Caterine, *Criminal, Victim, or Worker? The Effects of New York's Human Trafficking Courts on Adults Charged with Prostitution-Related Offenses* (New York, NY: Red Umbrella Project, 2014).

⁴⁸ Leon and Shdaimah, “JUSTifying Scrutiny: State Power in Prostitution Diversion Programs,” 268-269.

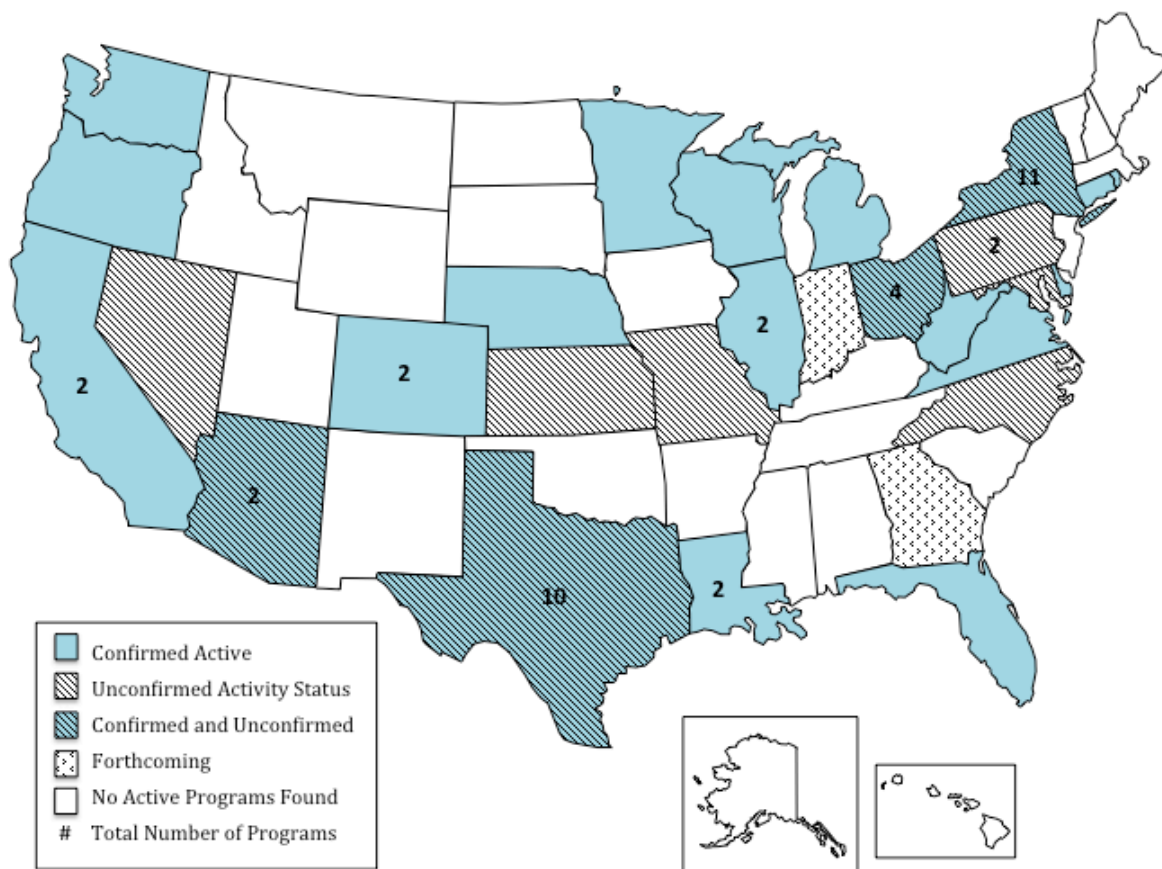
⁴⁹ These tensions and contradictions include unresolved national debates over distinctions between so-called “deserving” and “undeserving” defendants that often emerge in conversations over the appropriateness of criminalizing the exchange of sex for money. In addition, the ethics of harm reduction approaches to sex work, as well as penal regimes based on anti-trafficking stances with respect to sex work, add to the tensions embroiled within the appraisal of PDPs nation-wide. These dynamics of “penal welfare,” a system of welfare in which social safety nets become intricately tied to mechanisms of punishment and sanction, have been theoretically worked through by Gruber et al. in their seminal article “Penal Welfare and the New Human Trafficking Intervention Courts.”

II. Provisional map and taxonomy of PDPs in the United States

Section II of this report briefly maps the landscape of prostitution diversion programming in the United States at one point in time (2016), and offers a provisional taxonomy of program characteristics. By taxonomy, we mean that we detail and then categorize, according to key features and principles, the diverse practices and processes of PDPs nationally, including their initial development and funding mechanisms; entry processes and court-mandated service requirements; and exit and follow-up protocols, with specific attention to their cultural competencies (or lack thereof).

We identified 61 PDPs in existence as of May 2016; 42 (69%) of them were active, while 13 were unconfirmed, 2 were forthcoming, and 4 were defunct (see Appendix I). They were scattered across the country, although many were located in New York and Texas, both of which have state-level mandates for prostitution-specific programming.

Figure 1. PDPs Identified Across the U.S. as of 2016

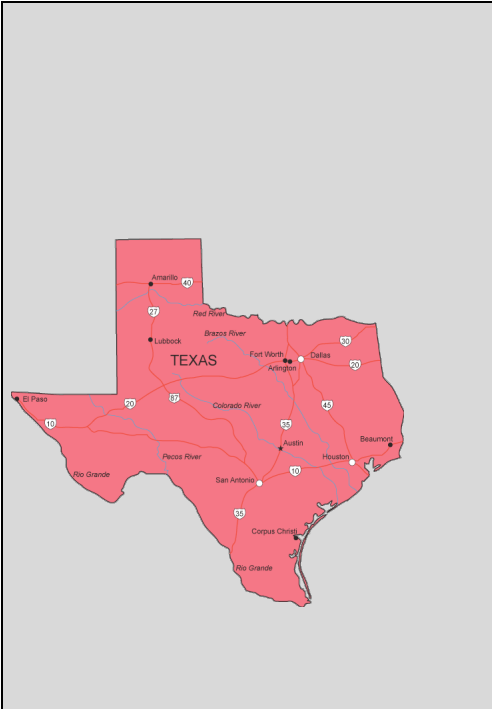


Overall, our mapping and analysis demonstrate two crucial points: the uneven patchwork of PDPs across states, and as the section below illustrates, the incredible diversity of principles and practices within PDPs, despite sharing terminologies and employing common narratives. While these programs are

growing in number, we found no single model or trend, and the pages that follow stress the great variation in practices, structures, timeframes, and institutions that govern PDPs in the United States. One reason for this diversity is that PDPs are extremely localized. For this reason, almost every component or characteristic of a program’s operation is contingent on specific players in local government, law enforcement, and social service provision.

Most importantly, paying attention to local diversity reveals that the use of “diversion” as a label for these court practices is both variable and deceptive: given that most participant/defendants are in the midst of post-arrest adjudication practices, they are not in fact diverted from criminal justice system engagement; at best, their detention may be held in abeyance and with luck removed as a threat. In fact, at the time of our research, the only programs that “diverted” people from the criminal justice system in any meaningful sense of the word (i.e., pre-arrest or pre-booking)⁵⁰ are not specific to prostitution offenses, but may include low-level drug and/or prostitution offenses. As noted in the analyses of both LEAD models (Seattle and others) and Atlanta/Fulton County PAD, the critical questions of whether these programs allow participants to avoid ongoing (and often harmful) engagement with police and courts is still an open question.

The case studies below on select PDPs offer rich detail on the founding, general structure and operations of three programs in varying contexts across the U.S. These program-specific spotlights helped us excavate and define the key categorical features of PDPs that form the basis of the taxonomical analysis to follow. The case studies also illuminate the multiplicity of PDP arrangements according to locale, a theme that we continue to build on in this section as we explore the diversity and inconsistencies in practices, despite a common rhetoric, across PDPs.

 A map of the state of Texas, colored in a light red/pink hue. Major cities are marked with black dots and labeled: Amarillo, Lubbock, Fort Worth, Dallas, Austin, Houston, San Antonio, Corpus Christi, and El Paso. Major rivers are also labeled: Red River, Brazos River, Colorado River, Pecos River, and Rio Grande. Highway shields for various routes (e.g., 77, 59, 20, 45, 10, 35, 17, 12, 10, 35) are scattered across the map.	<p>The Fort Worth Reaching Independence Through Self-Empowerment Court was established in 2011 by a judge, and is modeled closely after specialized drug courts. It’s a probationary program, meaning that referrals are made to the program after defendant/participants have plead guilty in court, though judges have the discretion to postpone adjudication. Individuals are referred by daily jail outreach, and to be eligible, they must have substance abuse issues, a history of sexual trauma, and no pending criminal charges. (Note: in Texas, the fourth misdemeanor charge for prostitution becomes a state jail felony.)</p> <p>The RISE program is intensive. It has six phases that most individuals take 3-4 years to complete (1 - post-jail release residential drug treatment, 2 – restricted supportive housing, 3 – supportive housing, community adjustment, 4 – supportive housing maintenance, 5- independent living, 6 – confirmation and graduation). Requirements of the program include no drug or alcohol use, mandated meetings and court dates twice a month, six hours a</p>
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⁵⁰ That is, *theoretically* in a pre-booking intervention, neither is a plea taken/held in adjournment, nor a disposition obtained/suspended. In a pre-arrest intervention, an arrest is not made.

month of counseling, community service, and a \$1000 probation fee. The demands of this program are more than many probationary programs for serious and violent criminal offenders. There are active sanctions for missing meetings or failure to comply with requirements, which range from increased drug/alcohol testing to jail time or termination from the program.

Many individuals who take part in the program won't even have charges dismissed upon completion of the program, and only those with deferred adjudication can have their charges dismissed.

No public data are available on reported measures, but our research indicated that as of 2015, of 35 women defendant/participants, 4 were terminated and 13 withdrew from the program.



The Chicago Prostitution and Trafficking Intervention Court was established in 2015 by the state's attorney. It is a post-booking program that replaced the previous court which existed prior to 2013, when the End Demand IL campaign helped to remove the felony charge for prostitution in IL. Representatives from the Center for Court Innovation in New York helped to develop the Chicago program and train staff.

Most individuals are referred to the program after arrest through sting operations. Individuals are not required to plead guilty to participate in the diversion program. Once defendant/participants enter, a case management organization conducts a needs assessment to link individuals to services.

Defendant/participants are required to set four goals for the court of treatment (e.g., registering for government benefits), and the number of goals increases by two if the defendant/participant is arrested again. Charges can be dropped once defendant/participants have completed their set of goals, but getting one's arrest record expunged is a harder and more costly process. Although the program allows individuals to continue in the program even when they are rearrested, the use of bench warrants for failure to appear at court dates or counseling meetings can result in increased jail time for individuals or high-cost bonds. The program is also physically far from the city center and therefore hard for people to access, making it



difficult for individuals to fulfill requirements.

As of mid-2016, no evaluation of the Chicago PDP had been done, and data are only inconsistently collected on the program.



In 2013, the New York State Unified Court System announced the launch of the Human Trafficking Intervention Courts (HTICs). The HTICs are a judiciary-led court initiative operating statewide in partnership with the Center for Court Innovation, a public-private entity, as a post-booking diversion program with a “problem-solving” approach to the adjudication of low-level prostitution and prostitution-related offenses.

Defendants can be diverted from penalties facing them on findings of guilt by completing a set of social service sessions prescribed to them via a pre-plea agreement (known as a “mandate”) entered into with the courts. Mandate length in terms of number of required sessions, as well as the length of time to complete the mandate, can vary by defendant, and the majority of services provided are counseling, case management and referrals.

It should be noted that in New York, trafficking is an affirmative defense to a charge of prostitution, but this defense is a totally separate and exclusive process that must be forfeited by individuals who participate in the HTICs. After completing their service mandates, most defendants are granted an adjournment in contemplation of dismissal and must stay clear of further arrests for six months before their charges are dismissed and sealed.

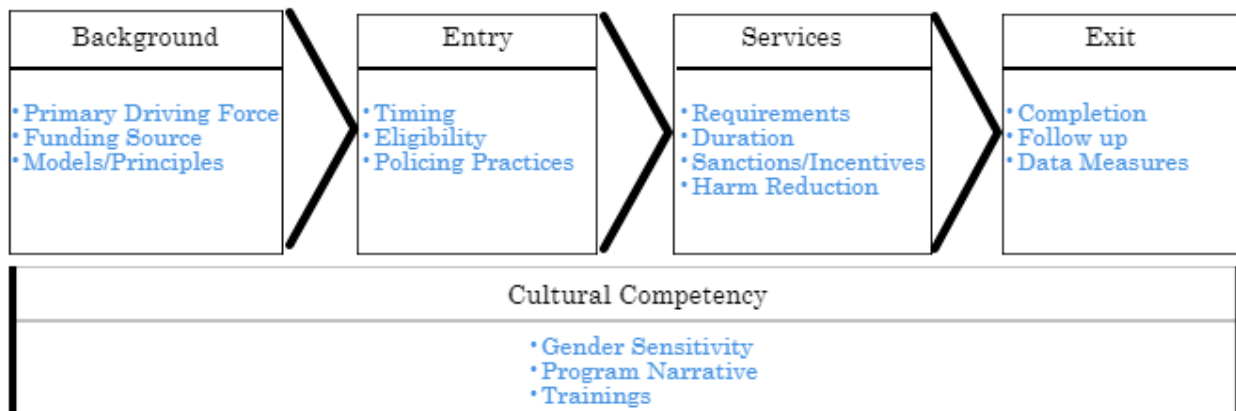
While the framing rhetoric of rescue and trafficking is consistent across the HTICs, the actual practices are idiosyncratic and inconsistent at the city level and even at the borough level in NYC. Program characteristics and court practices can vary court-by-court depending on the county and prosecutor, as well as the service needs and criminal history of the defendant/participant, which can be a source of distress for those in the system.

For more detailed history and analysis, read the full GHJP report on the NYC HTICs, available at the GHJP website: www.law.yale.edu/ghjp

From our mapping and case studies, we identified five features that allow for some categorization (analytic taxonomy) across PDPs, even with their differences and their respective local contexts, visualized in **Figure 2** below.

1. Background to creation: The circumstances which surround the **creation** of PDPs, including their models, funding sources, models, and fundamental principles;
2. Entry: The **entry** process for defendant/participants, including how, at what point in the adjudication process, and under which eligibility criteria individuals **enter** programs, which is in turn influenced by local legal structures and policing practices;
3. Range of services: The types and intensities of the **services** mandated through PDPs, including duration, incentives, and sanctions for noncompliance or failure;
4. Exit/completion requirements: Requirements for successful **completion** of diversion programs;
5. Cultural Competency: And lastly, the **cultural competency** of PDPs, including staff training, program narratives, and PDP sensitivity and capacity to serve various subpopulations.

Figure 2. Taxonomizing PDPs



In this section, we break down the different practices, frameworks, and structures that define diversionary programming. (Although the majority of PDPs operate at the *county* level, this document refers to each PDP by the city with which it is associated.) An important takeaway from the data that makes up this national taxonomy of PDPs is not *just* that there are major inconsistencies and a lack of standardization in programs across the U.S., but, perhaps more importantly, that these differences obscure injustices.

1. Background and creation of PDPs

Our first set of inquiries had to do with the context of each PDP's creation. We asked how and by whom each program was initiated; on what principles or frameworks each program was developed; how each program was funded; and under what state or local legal regime each program operated.

1.1 Program development: Overview

The creation and development of any one PDP was often catalyzed by a particular individual, or entity, albeit frequently in consultation with other stakeholders. The identity of that primary driver and the level of involvement by the other stakeholders have an outsized influence on the nature of the program and the level of autonomy granted to defendant/participants. We identified the following driving forces behind program creation: (1) judges, (2) prosecutors or state’s attorneys, (3) service providers, (4) governments, and (5) community advocates. Program initiation also includes the more cross-cutting role of national level entrepreneurs, including funders, and various public-private entities such as the Center for Court Innovation (CCI). [See GHJP report on NYC HTICs for more information about CCI, as well as the website for the Katal Center for Health Equity and Justice, which supports pre-booking programming, following the LEAD model, in many cities.⁵¹]

Background
<ul style="list-style-type: none"> • Primary Driving Force • Funding Source • Models/Principles

Judges	Prosecutors or attorneys
<p>Programs that were initiated by judges, like the RISE Program in Fort Worth and the STAR and PRIDE courts in Dallas often arose as a result of that judge’s personal experience adjudicating prostitution cases, as well as personal beliefs and convictions. The judges in question all had previous specialty court experience and were inspired to create a prostitution-specific program after observing what many described as the “revolving door,” whereby individuals engaged in prostitution are arrested and cycled through the criminal justice system over and over again. They often saw defendant/participants with apparent substance abuse problems (though any substance use is often assumed to be abuse regardless of substance used, frequency, or circumstances of use) and few resources to address their needs, and viewed the PDPs as a way to provide services to an otherwise hard-to-reach population and potentially halt the revolving door effect.</p> <p>Other judge-led programs include two PDPs in Ohio (CATCH Docket in Columbus and the Cleveland Municipal Court Human Trafficking Docket), in addition the NYS HTICs, which were created pursuant to the New York State Unified Court System’s Human Trafficking Intervention Initiative, a judiciary-led and statewide court initiative. Whereas Texas’ system of statewide PDPs operates according to legislation adopted in 2011, the HTICs in NYS do not have a legislative mandate: they are strictly a judicial initiative announced by Judge Lippman in 2013 and supported by the NYS Unified Court System in partnership with a public-private entity (the Center for Court Innovation).</p>	<p>Among programs led by prosecutors or state’s attorneys, the impetus for creating the PDPs also varied greatly. The local State’s Attorney’s offices were the primary driver for both of the Illinois PDPs: Chicago and Aurora. In Aurora, Illinois, the state’s attorney created the program as a response to community complaints about gang, drug, and prostitution activity in the city. Similarly, the local district attorney’s office developed SAFE Court in Houston as part of a county-wide focus on human trafficking. Other prosecutor-led programs include Phoenix Court in Austin and the Exit Strategy program in Shreveport, Louisiana.</p> <p>The pre-booking LEAD program in Seattle was developed in response to litigation against the Seattle police department claiming that drug-law enforcement was a driver of racial inequities in the criminal justice system. This litigation and the eventual development of the initiative were spearheaded by the Public Defender Association (PDA) of Seattle (an organization that started by providing public defense services but now focuses on advocacy and criminal justice reform).</p>

⁵¹ Center for Court Innovation, “Home, Center for Court Innovation,” available at <https://www.courtinnovation.org/>; Katal Center for Health, Equity, and Justice, “Our Work,” available at https://www.katalcenter.org/our_work.

<p style="text-align: center;">Service providers</p> <p>Service providers played the strongest role in initiating the programs in Sacramento, California; Los Angeles, California; Corpus Christi, Texas; Sarasota, Florida; and Hampton, Virginia. In most of these jurisdictions, the organizations that drove the creation of the PDPs were already providing services to the population of interest. These service providers hoped that the PDPs would reduce the incarceration rate for individuals engaged in prostitution and increase access to much-needed services.</p>	<p style="text-align: center;">State and local government</p> <p>In some cases, the main incentive for the creation of PDPs came from the local government. For example, a city council member hoping to reduce jail costs created the RAISE Program in Tucson, Arizona. In Texas, state legislation mandating “prostitution prevention” programs in all counties with populations greater than 200,000 people led to the creation of some PDPs.⁵² In Cincinnati, Ohio, local police officers advocated for the creation of the CHANGE Docket.⁵³ In Huntington, West Virginia, the Department of Corrections sponsored grants to initiate the PDP.</p>
<p style="text-align: center;">Community advocates</p> <p>The Pre-Arrest Diversion (PAD) program in Atlanta/Fulton County, Georgia is the only example we found in which individuals who were <i>affected by the criminalization of sex work</i> took an active role in the creation of a PDP, here a pre-arrest diversion program. In this case, transgender women and the Solutions Not Punishment Coalition (SNaPCO) of the Racial Justice Action Center led a grassroots organizing campaign to initiate the program after realizing that they were being targeted for arrest by a private security firm in a specific area of Atlanta.</p>	

1.2 Program development: Models and principles

The models and principles – i.e., *what story drove the PDPs’ creation* — that were called on to develop programs varied substantially across the country. Choosing a model is important because it often informs many aspects of the program including duration, eligibility requirements, and service provision. Information on specialty court innovation is often dispersed in an inconsistent way. Most programs that we reviewed were developed through an amalgamation of influences, including: the unique and occasionally idiosyncratic perspectives of the individuals driving the development of the PDPs; state and local legal regimes; the stipulations of grants and other funding sources; and the availability of pre-existing resources or experience.

Here, we focus on several themes that emerged around how program models were chosen: (1) no model, (2) philosophy, (3) proximity to other programs, (4) modification of an existing program, and (5) service provider or curriculum focused.

⁵² Tex. Health & Safety Code Ann. §§ 169.001-006 (West 2015).
⁵³ While the State of Ohio doesn’t require jurisdictions to create specialty court, diversion programs are popular in Ohio. In January of 2014, the Ohio Supreme Court established certification requirements for Ohio specialty courts. The Supreme Court of Ohio and the Ohio Judicial System, “Specialized Dockets Section,” accessed April 29, 2016, available at <https://www.supremecourt.ohio.gov/JCS/specDockets/>.

<p style="text-align: center;">No model</p> <p>A number of programs reported not using any specific model to inspire the structure of their program. Examples of this include the Los Angeles Prostitution Diversion Program, the Hampton Breaking Free Program and the Deferred Prosecution Program in Aurora, Illinois. Not using a model is noteworthy because it means the program is highly local and might be even more likely to be driven by individual interests, ideologies or beliefs than programs that looked at other places for models.</p>	<p style="text-align: center;">Philosophy</p> <p>Some programs were framed around an overarching philosophy. These philosophies may have focused on harm reduction, like the RESET Program in Sacramento, or religion and rescue, like the faith-based program run by the Purchased: Not for Sale service provider of the Shreveport PDP (the philosophy of Purchased is rooted in a rescue narrative that views all sex work as exploitative and claims to help defendant/participants “break free from the bondage they are in and live the life God created them to live.”⁵⁴). The philosophy of a program is also related to the chosen curriculum or available services in the local area. Frequently, the underlying philosophy of a chosen program model reflects the values and beliefs of those developing the program.</p>
<p style="text-align: center;">Proximity to other programs</p> <p>Programs commonly reported learning from those in close proximity. The RAISE Program in Tucson is largely based on Project ROSE, which was developed nearby in Phoenix, Arizona. RAISE Program staff chose the program because they felt it dealt with prostitution in a humanitarian way and reduced incarceration. Tucson government officials also consulted with one of the creators and major proponents of Project ROSE, Dominique Roe-Sepowitz, as they developed the Tucson model. In Texas, individuals involved in the development of the Fort Worth RISE Program described visiting the STAR Court in Dallas, only 45 minutes away. Both RISE and STAR intervene post-adjudication, during the probationary period. The Red Cord Program in Corpus Christi was strongly influenced by the sting operation program in Dallas called Prostitution Diversion Initiative - New Life (PDI-NL), which itself influenced the founding of the Dallas PRIDE court and inspired the 2013 legislation to mandate such interventions throughout the state. In California, the now defunct SAGE program in San Francisco provided the basis for the RESET program in Sacramento. In Ohio, the CHANGE Docket in Cincinnati and the Cleveland Municipal Court’s Human Trafficking Docket were both inspired by and modeled after the CATCH Docket in Columbus.</p>	<p style="text-align: center;">Modification of an existing program model</p> <p>Seattle’s LEAD program model has traveled great distances and inspired similar programs in jurisdictions across the country, including in Huntington, Santa Fe, Atlanta, and Albany. This type of dispersion is largely related to the interests of local communities in the pre-booking process and harm reduction philosophy of LEAD model. Choice of a specific model is not exclusive to LEAD, as several programs, including almost all of those in Texas, reported modifying the methods used in their drug court to suit their evolution of the prostitution court. Specifically, these programs often chose to mimic the use of multiple, progressive phases and a team-oriented court environment that made use of staff meetings in order to facilitative decision making.</p> <p>In NYS, the HTICs evolved from nearly a century of experimentation with prostitution-focused courts, most notably the Women’s Court of the 20th century and the Midtown Community Court of the 1990s. While the HTICs are in some technical and structural ways distinct from their predecessors, each iteration shares similarities in who is targeted and in their mix of ideologies about gender, sex, crime and rehabilitation. [For more of this history, see GHJP report on NYC HTICs, which includes an in-depth analysis of the “waves” of prostitution-specific interventions by local courts.⁵⁵]</p>
<p style="text-align: center;">Existing curriculum or relationship</p> <p>Modeling programs based on other existing processes is closely linked to the development of programs around existing services or curricula. The Houston program reported using a phase model and response matrix that had already been implemented in other specialty courts. The Intensive Diversion Program in Providence, Rhode Island, decided to address prostitution-specific charges by expanding use of a for-profit, evidence-based curriculum already in use. In the case of the Shreveport program, the overarching reason for the courts establishment was to divert individuals charged with prostitution to an existing program (i.e., Purchased: Not for Sale).</p>	

⁵⁴ Purchased: Not for Sale, “Mission Statement,” available at <http://thehubministry.org/purchased/>.

⁵⁵ Yale Global Health Justice Partnership, *Un-Meetable Promises*.

1.3 Funding structures

Jurisdictions around the country use many different streams of funding to finance these courts and various services that are provided by the programs.

Municipal funding	Fees and fines
<p>Some programs are able to operate with minimal additional funding, using existing funds or relying on current staff (e.g., from another specialty court) to donate their time. A few programs with significant law enforcement involvement, like the RAISE program in Tucson and the LEAD program in Huntington reported some funding from the police department budget. In many cases, community service providers are expected to self-fund through private donations or grants, although some providers are paid with municipal, state, or federal funds for serving defendant/participants in PDPs.</p>	<p>A number of programs <i>use fees from other courts</i> to enhance the funding for PDPs. The programs in Los Angeles, Portland, Aurora, Illinois are partially funded by johns' schools, while the Dallas PRIDE Court receives some funding from fees charged to DWI defendant/participants in pre-trial programs for certain drug offenses. In the Shreveport program, certain defendant/participants not charged with prostitution may be mandated to make donations to Purchased: Not for Sale, the primary faith-based community service provider for the PDP, in lieu of paying fines.</p>
<p>Grant funding</p> <p>States that reportedly provided grants to fund PDPs included Texas (through the Office of the Governor's Criminal Justice Division), Florida, and West Virginia (for the post-booking program). Federal funding was usually provided by the Department of Justice or the Substance Abuse and Mental Health Services Administration (SAMHSA). Other grants for service provision were obtained through private institutions such as foundations and family funds. For example, the Bernadine Franciscan Sisters Foundation funded the PDP in Hampton. The LEAD program in Seattle also received funding for training, programming, and evaluation from the Ford Foundation and Open Society Foundation, among others.</p>	<p>Although the majority of programs reported no defendant/participant fees and many even waive standard court fees, <i>there were a few programs that charged PDP defendant/participants to defray the costs of their services.</i> Some of the fees were standard, such as the \$25 court processing fee in Aurora, Illinois. In Texas, there is a \$60 per month supervision fees charged in the Houston SAFE program and the Dallas STAR program, but this fee was not reported in the Austin Phoenix Court or the Dallas PRIDE Court. The Houston program also charges \$20 per month for lab fees, and the Fort Worth RISE Court charges defendant/participants \$15 per mandated urinalysis. In Fort Worth, defendant/participants are also expected to pay a one-time \$1,000 program fee in lieu of the \$60 per month charge for probation. However, most jurisdictions reported that fees are reduced or waived depending on need and that payment plans could be arranged. Some programs stressed that collection of these fees is not made a priority until closer to graduation.</p>

Many programs indicated that funding was sufficient, and few anticipated problems in renewing their grants, but a couple of programs did express concern about the sustainability of their funding, either because their primary grant was ending or because they expected budget cuts at the state level. Only the Huntington PDP indicated that renewal of their funding would be contingent on program success, but other case study and interview participants were not asked whether outcomes reports, especially measures of success, were an element of continuation of funding.

1.4 Local legal regime: Leverage in the shadow of felonies and jail time

Another key determinant of PDP structure—particularly with respect to program duration and intensity, eligibility requirements, and sanctions for non-compliance or unsuccessful termination—is the state and local legal regimes in which the programs are situated.

Most of the PDPs we studied handled misdemeanor charges, but a few, such as the Fort Worth RISE program and the Dallas STAR Court, exclusively handle felony offenses. In recent years, many states have moved to de-felonize prostitution. This has significant implications for prostitution diversion because the

duration and intensity of PDP mandates are often directly related to the leverage that prosecutors wield in charging and sentencing; *the more serious the charge and the more severe the possible sentence, the more coercive a PDP can afford to be*. In states like Illinois, where prostitution is no longer a felony offense, individuals arrested on prostitution charges are often able to plead out of jail on time served. As such, Illinois programs lack leverage to induce participation in demanding diversion programming, and their more lenient models reflect this reality.

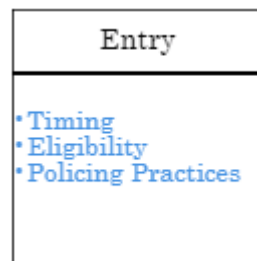
It is also important to note that many cities and localities have specific municipal-level offenses related to prostitution, which are separate from state-level felony or misdemeanor charges. In our research, only the PDP in Milwaukee, Wisconsin handles municipal or locality-specific charges.

Another aspect of legal regimes that is particularly salient to the structure and function of PDPs relates to *local policing and incarceration practices*. Sometimes different PDPs in the same state were designed in dramatically different ways, in part due to variant policing and incarceration practices in different regions.

- For example, prostitution is heavily policed in Dallas and Fort Worth, which results in numerous felony prostitution charges and convictions. In Austin, however, prostitution is less of a priority for law enforcement, and felony prostitution charges are rare.

2. Entry

There are several different factors that influence individuals' entry into PDPs, including timing of the diversion in the criminal justice process, each specific program's criteria for eligibility, and police practice.



2.1 Timing

One of the defining features of a program model is the point at which these programs take place within the criminal justice process: (1) pre-arrest or pre-booking, (2) post-booking and pre-trial, and (3) post-adjudication.

The earliest point for diversion is pre-arrest, such as in the Pre-Arrest Diversion (PAD) initiative in Atlanta/Fulton County, where police officers can offer eligible individuals the option of diversion without arrest. Seattle LEAD varies slightly in that diversion can happen pre-arrest or pre-booking: individuals can be offered LEAD through social contact referrals (pre-arrest, see section 2.3 for more detail) or through arrest without booking (pre-booking).

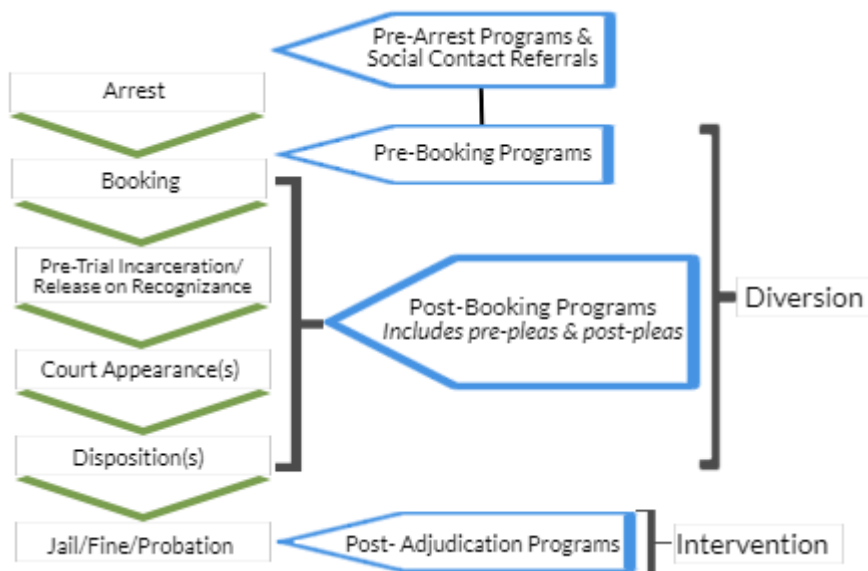
The most common point for diversion comes after arrest and booking, but before the case goes to trial. Most of the programs that we examined fall into this category, but there was still considerable variation. For example, many PDPs do not require a plea to participate in the program. In Aurora, Illinois, *no plea is required, but defendant/participants must sign an acknowledgement of guilt that can later be used against individuals who fail to complete the program*. The Columbus, Sacramento, and Portland, Oregon, programs require a guilty plea, while defendant/participants in the Los Angeles program plead guilty or no-contest. However, it is worth noting that some of our defendant/participant interviews suggested a lack of clarity about program, court, and/or referral processes. We had a few instances of defendant/participants thinking that they had to plead guilty in order to enter their local PDP, while the court staff we interviewed for that same PDP claimed otherwise.

Finally, there are a couple post-adjudication programs that are considered intervention, rather than diversion, programs (Fort Worth RISE Program and Dallas STAR Court). Both of these target felony charges and defendant/participants are overseen by probation officers.

2.2 Eligibility

There was considerable diversity in the eligibility criteria for participation in PDPs around the country. The majority of programs are aimed at misdemeanor offenses rather than felonies. In some places, like Illinois, prostitution has been either de-felonized or rarely considered a felony-level offense. Texas and Louisiana are notable exceptions: prostitution charges become state-jail felonies after the third misdemeanor conviction in Texas, and the third prostitution offense in Louisiana is escalated to a felony.

Figure 3. Schematizing PDP Points of Entry



Criminal history	Gender
<p>Many programs screen potential participation by defendant/participants by their criminal records. Some PDPs, like the SAFE Court in Houston, serve first-time offenders and other individuals with shorter criminal histories. Other programs differentiated between first-time offenders and repeat offenders in different ways. The PDP in Los Angeles mandates 8 sessions of services for first-time offenders and 18 sessions for individuals with multiple offenses. In the NYC HTICs, the extent or nature of a defendant/participant's prior convictions will not preclude participation, though it may affect the length of the mandate (e.g., number of required sessions) or the plea deal offered after mandate completion. The programs that target defendant/participants with longer criminal records, like the felony-level programs in Fort Worth and Dallas, often reported having greater leverage in mandating more intensive services and in encouraging defendant/participants to accept the terms of the PDP.</p> <p>In many cases, potential defendant/participants are also screened for violent offenses, which either disqualify a potential defendant/participant outright or on a case-by-case basis. When violent offenders were</p>	<p>All of the PDPs serve cisgender women primarily, although some programs are also open to cisgender men and transgender or gender non-conforming defendant/participants. Out of 35 PDPs interviewed about eligibility by gender, 8 reported that they exclusively serve cisgender women. Even for PDPs that are not exclusive to cisgender women, <i>the actual participation of cisgender men and transgender or gender-nonconforming individuals in services is rare</i>, with the majority of programs reporting few transgender defendant/participants and even fewer males. This is possibly due to policing practices that target women who sell sex more frequently than men or transgender individuals involved in the same activities, or who automatically view men and transgender women in the sex trade as johns or traffickers. A variation on this are the HTICs in the NYC area, where the HTIC defendant/participant population borough-by-borough reflects policing practices that target minoritized individuals, including trans individuals – mostly trans women – who are presumed to be or are engaged in sex work).</p> <p>The actual extent of men selling sex in street-based</p>

<p>explicitly excluded, the primary reason stated was to protect program staff and other defendant/participants. In some cases, individuals with violence in their criminal histories are prohibited from participating due to the terms of the federal or state funding. Some programs, such as Los Angeles, also screen out defendant/participants with accompanying misdemeanors, such as drug charges. In other cases, accompanying charges are handled in combination with the qualifying charge by the PDP.</p>	<p>economies needs more careful service-oriented and justice-focused attention to ensure both health and rights adequacy in responses. What is known primarily derives from programs that work with transgender youth (a category which includes both under- and over-18s). Some programs also reported that men and transgender or gender non-conforming defendant/participants are less likely to accept the terms of the PDPs, and/or are charged under other offenses (lewd conduct).</p>
<p>While some of the PDPs are limited to individuals with current prostitution charges, many accept a range of charges as long as the defendant/participant has a history of engaging in prostitution. Most of the non-prostitution charges that qualify are drug-related (Sarasota, Fort Worth, Dallas PRIDE Court, Hampton, Huntington, and Providence) while some PDPs also target proxies for prostitution charges like loitering (Providence, Sacramento, and Wilmington, Delaware) and solicitation of a ride (Chicago). In Wilmington and Fort Worth, an individual charged with theft can also be accepted into the program if they have a history of prostitution.</p>	<p style="text-align: center;">Age</p> <p>The Houston SAFE Court is one of a few programs with an explicit age limit, limiting participation to defendant/participants aged 17 to 25 because this group was thought to be the most challenging to reach. Younger individuals are perceived to earn more and may thus be less likely to exit prostitution. Interestingly, other programs reported targeting older individuals for the same reason, because younger individuals tend to not want to participate. In Sacramento, the PDP only serves defendant/participants older than 21, but another organization called Another Voice Another Chance provides diversion programming for those 21 and younger. A few programs reported including minors, while other locations, like in Houston, have an alternative PDP specific to minors, but questions of the contradictions in how minors are treated both de jure/rhetorically as victims and treated as criminals or truants are unaddressed.</p>

It is important to note that those we spoke with were not always certain what the eligibility requirements were—and this was often because programs did not have any established guidelines for eligibility. One informant from a program in Rhode Island expressed uncertainty even regarding which charges made women eligible.

2.3 Policing practices

Individuals brought in on prostitution charges are frequently arrested through sting operations conducted by vice squads, with many arrested by patrol officers in response to community complaints. Many jurisdictions reported a shift in recent years from concerns about street prostitution to concerns about the selling of sex at storefront businesses like massage parlors or on websites like Craigslist and Backpage.⁵⁶ Although few law enforcement officers responded to requests for interviews, several court

⁵⁶ In April 2018, Congress passed and signed into law HR-1865, the bill known as the Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Trafficking Act (SESTA). The bill aims to curb online sex trafficking by increasing liability for content posted by third parties on websites; however, the consequences thus far have been immediate and devastating for sex workers who rely on the internet to advertise services, find and screen clients, as well as share and access critical information (such as “bad date lists”) – all of which contribute to their overall safety. Even before it was officially passed, FOSTA/SESTA had a chilling effect on common advertising and review platforms used by those who trade sex, including but not limited to Craigslist Personals and Backpage [Emily McCombs, “‘This Bill Is Killing Us’: 9 Sex Workers On Their Lives In The Wake Of FOSTA,” *Huffpost*, 11 May 2018, available at https://www.huffingtonpost.com/entry/sex-workers-sesta-fosta_us_5ad0d7d0e4b0edca2cb964d9].

officials made it clear that policing practices around prostitution had a considerable impact on the PDPs, whether law enforcement is closely integrated into the programs or not: all of the programs dealt primarily with people arrested for street-level (i.e., street and massage parlor) offenses associated with offering to sell sex.

Programs involve law enforcement in multiple ways. The development of the Atlanta/Fulton County Pre-Arrest Diversion program seems to be a rare exception in training police officers on how to identify, contact, and support people specifically in the sex trade.⁵⁷ Other jurisdictions collaborate with law enforcement through targeted sting operations to “recruit” individuals into the programs. For example, the judge overseeing the now-defunct Project Fresh Start in Detroit, Michigan, openly coordinated with police about the timing of stings to ensure that the jail had enough beds to accommodate new arrestees. Other well-known programs that involve PDP-coordinated sting operations include Project ROSE in Phoenix and PDI-NL in Dallas. In both cases, police use sting operations on particular nights to bring individuals to a community location that provides on-site booking and services post-arrest. The programs in Tucson, Corpus Christi, and Hampton follow this model.

These close partnerships with law enforcement may contribute to what has been described as a net widening effect. “Net widening” refers to reforms that make it easier to sweep individuals into the criminal justice system. Critics allege that diversion and other “decriminalization” reforms “[make] it possible to reach more offenders by simplifying the charging process and eliminating counsel, along with other forms of due process,” while also “heighten[ing] the impact of the net by turning to supervision and fines as indirect, long-term constraints on defendant/participant behavior, and by extending the informal consequences of a citation or conviction deep into offenders’ social and economic lives.”⁵⁸ All of the programs we studied, whether sting-based or not, are potentially net-widening; in some cases, like PDI-NL in Dallas, law enforcement officers *are not able to offer services without making an initial arrest*. Some programs, like the one in Austin, acknowledged that the existence of the PDP may result in heavier policing and increased arrests as the program seeks to fill its open slots. Although we have not studied this phenomenon closely, a systematic analysis of rates of arrest could better quantify the extent of this problem.

The net-widening concern persists for pre-arrest and pre-booking programs, which generally claim to reduce harms associated with CJS engagement. The LEAD program in Seattle and some affiliated programs elsewhere rely partially on social contact referrals by police. With social contact, police officers (and in some cases, non-police community members) are able to refer individuals into the program whom they believe are at high risk of *future* arrest for any of the divertible offenses. While social contact referrals enable individuals to access social services without the contingent threat of arrest, there is concern that this may have a net-widening effect, as police who make referrals in situations without probable cause for arrest may be increasing contact with law enforcement for individuals who would not have otherwise had a police encounter. For instance, in environments where police were not actively arresting the divertible offenses under normal operating procedure and begin “diverting” individuals they would have otherwise not contacted on the grounds of connecting them with social services, arrest numbers may not decrease and police-community interaction (and all of its attendant risks) may actually increase.

⁵⁷ Atlanta/Fulton County Pre-Arrest Diversion Initiative, “Learn about Pre-Arrest Diversion,” available at <http://prearrestdiversion.org/learn-about-pre-arrest-diversion/>.

⁵⁸ Alexandra Natapoff, “Misdemeanor Criminalization,” *68 Vanderbilt Law Review* 1055 (2015): 1059.

We also observed another trend. In Chicago, city police have shifted toward issuing municipal ordinance violation citations rather than arresting individuals on prostitution misdemeanor charges, which reduces the number of individuals eligible for the PDP. That said, this practice seems to be linked not to the creation of the PDP, but to a growing perception among Chicago law enforcement that policing misdemeanor prostitution is a waste of time and resources now that prostitution has been de-felonized and individuals are rarely convicted on prostitution-related charges.

3. Services

As with every other feature of PDPs, service delivery and provision also varies greatly across programs. This section will specifically focus on needs assessments, program requirements and flexibility, program length, sanctions and incentives, and harm reduction strategies.

Services
<ul style="list-style-type: none">• Requirements• Duration• Sanctions/Incentives• Harm Reduction

3.1 Intake and needs assessments

Most programs reported conducting some type of needs assessments with defendant/participants. A wide range of actors including case managers, probation officers, service providers, police officers, and peer mentors (e.g., former sex workers) conduct these assessments. Some of the individuals conducting these assessments have formal social work or trauma training, while others do not. In some cases, assessments are officially associated with the court system, while others are undertaken outside the court and criminal justice system.

The most commonly reported assessments are for personal history, substance abuse or addiction, mental health, and trauma. Assessment tools employed by PDPs included the Level of Service Inventory-Revised (LSI-R) survey, Texas Risk Assessment System (TRAS), and the Addiction Severity Index. Additionally, programs also report screening individuals for motivation using screens like the TCU Treatment Motivation Scale and the Readiness to Change Questionnaire. Some programs, like those in Dallas and Houston, have one assessment that is administered to every potential participant. Other programs like one in Hartford, CT lack very consistent systems, and screenings vary depending on resources. Some, like Chicago's CPTIP and the LEAD-affiliated programs, have a short initial intake and while longer assessments are conducted later. In the case of the HTICs in NYC, no formal and standardized needs assessment is conducted by the courts prior to determining the scope of the service mandate; rather, needs determination happens with service providers who use their own protocols in the assessment. The timing of assessments also varies greatly. Assessments happen at the point of arrest, jail, arraignment, program enrollment, or as needed throughout the program.

A significant consequence of the programmatic focus on the provision of services based on paradigms of emergency or trauma assessments is that PDPs tend to be less concerned with the provision of fundamental and structurally-relevant resources such as stable housing, economic opportunities, and immigration assistance, which are some of the common needs voiced by advocates for sex worker health and rights. When defendant/participants cannot access resources to meet basic needs like adequately-paid employment or stable housing, engaging in a treatment plan for a substance use issue or another medical or social service challenge is made much more difficult.⁵⁹ While mental health and substance use services are often needed, the focus on behavior change shifts responsibility for long-term change onto

⁵⁹ Meredith Dank, Jennifer Yahner, Kuniko Madden et. al., *Surviving the Streets of New York Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex* (Washington, DC: Urban Institute, 2015), available at <https://www.urban.org/sites/default/files/publication/42186/2000119-Surviving-the-Streets-of-New-York.pdf>.

the individual. This distracts from meaningful systems-level redress of the economic and structural barriers to changing one's life generated by poverty, citizenship status, criminal records, lack of education and so on.⁶⁰ The mismatch between resources and access needed, and services and programmatic offerings in PDPs, is a critical concern.

3.2 Curriculum and treatment plans

Most programs have standard requirements that all defendant/participants must complete. These requirements vary widely. Some programs, such as one based in Sacramento, are based in a state that requires an HIV test (accompanied by education) for arrests under prostitution arrest, and other jurisdictions such as Sarasota and Aurora, Illinois, require a general STI screening to complete the program. (Notably Florida also has a mandatory HIV test).⁶¹ Intensive and lengthy programs often have multiple sequential phases in which defendant/participants are required to complete a set list of requirements prior to moving on to the next phase. Requirements often entail inpatient and/or intensive outpatient drug treatment, sobriety requirements, mandatory relocation to sober or supportive housing, and group and individual counseling. Examples of programs using this type of curriculum include programs in Fort Worth and Dallas. A large number of programs require weekly, biweekly, or monthly court visits, as well as random drug tests. Several programs (e.g., Dallas, Fort Worth, and Sarasota) also seek to maintain control over defendant/participant relationships, both intimate and familial, by requiring them to cut ties with people from their "former" lives. Other programs, such as the CATCH Docket in Columbus, try to monitor and control defendant/participant relationships, but the extent to which they are able to do so in practice is unclear.

Required coursework is also common among programs. Obtaining copies of the curricula used in these courses was difficult, so we don't know exactly what is covered in most of these different programs but believe most of them are cognitively or behaviorally focused. The Phoenix Court in Austin, the CATCH Docket in Columbus, and other programs employ a program called Seeking Safety, which covers life skills, work skills, and more. Programs also require items like community service hours (i.e., Hartford).

Other programs have more flexible program requirements and service provision. The pre-booking LEAD program in Seattle requires one initial assessment to be completed within 30 days of an arrest or social referral. Following that, no other participation in the program is necessary. In Austin and Minneapolis, programs have multiple phases, but components of those phases can be altered depending on the different desires and needs of the defendant/participant and the input of the case manager or probation officer (as long as it is approved by the prosecutor and judge). In Chicago, each defendant/participant is required to complete 4 specific goals if it is their first time going through the court. One goal is a mandatory class called "Unhooked", which is a full day long and covers a wide range of health- and sex work- related topics, including needle sharing and the impact of drug use on decision making and negotiation with clients. The other three goals are decided based on the defendant/participant's needs and can incorporate their input. In the Sacramento RESET program, defendant/participants are referred to services based on the priorities identified during their needs assessment.

Notably, a few PDPs do not have any standardized durations, curricula or requirements for defendant/participants: for instance, in the NYC HTICs, the scope, intensity, and outcomes of the mandate (including its length, i.e., the number of required social service sessions) can vary court-by-court

⁶⁰ Leon and Shdaimah, "JUSTifying Scrutiny: State Power in Prostitution Diversion Programs."

⁶¹ Amira Hasenbush, Bianca Wilson, Ayako Miyashita, and Madeleine Sharp, *HIV Criminalization and Sex Work in California* (Los Angeles: The Williams Institute UCLA School of Law, 2017), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-Sex-Work-Oct-2017.pdf>.

depending on the county, judge and prosecutor, as well as the service needs and criminal history of the defendant/participant.

3.3 Referral to outside services including medical care and HIV testing

Many programs report referring defendant/participants out to services that are not required. Referrals to medical services were made through community health centers, and 9 programs explicitly mentioned HIV and STI testing and counseling. Others mentioned referral to well exams or general care, dental care, or outside mental health or counseling services. The Red Cord Program in Corpus Christi reported providing pre-exposure prophylaxis. In contrast, the CHANGE Court in Cincinnati reported mandatory HIV and STI testing, results of which could then be used to increase a defendant/participant's sentence from a misdemeanor to a felony and prevent the defendant/participant from having their record expunged upon completion.

PDPs also report the ability to refer out to addiction and substance abuse services that are not court-ordered. These services, which vary in intensity and length, include inpatient facilities and outpatient counseling. Medication management for substance abuse is available in specific locations, including Austin, Seattle, and Providence, among others. Outside of these areas, however, abstinence and behavioral counseling approaches to substance abuse treatment serve as the standard of care. Staff and judges in several locations in Texas explicitly reported not knowing about or believing in the use of biomedical forms of substance abuse treatment like methadone maintenance or suboxone for opioid addiction.

3.4 Length of programs

Program length often depends upon the intensity of the program requirements, the defendant/participant's engagement, as well as service provider capacity. The programs in Hartford and Chicago are on the shorter end, with defendant/participants taking a few months to complete. At 2.5 to 5 years, the RISE program in Fort Worth was one of the longest to complete. The RISE program is post-adjudication and requires residential substance abuse treatment as one of its six phases. The long duration is also connected to the length of time defendant/participants are on probation; probation terms are often 5 years but can be lengthened to 10.

Rate of mandate completion in the NYC HTICs ranged from as fast as one month to upwards of 6 months. A 2014 Red Umbrella report on the NYC HTICs found that the time required to complete a mandate was longer when limited service provider capacity was met with specialized defendant needs (e.g., non-English speaking defendant/participants, especially Mandarin-speaking, often faced delays in completing their mandates given shortages in providers equipped to provide appropriate language support).⁶²

Incentivizing participation in programs was also discussed, with longer programs targeting populations that had longer criminal records and therefore higher risk of significant jail time. This is connected to the legal regime discussed earlier and how PDPs engage with populations facing a range of charges. PDPs that target populations with more severe charges, like felony prostitution charges, are often of longer duration and intensity. Some of the shorter programs, like the one in Chicago, reported being less capable of both incentivizing participation and having significant impact. The Chicago program staff were able to make this comparison because a now defunct court had previously addressed a population with felony level charges before the state eliminated felony charges for prostitution.

⁶² Ray and Caterine, *Criminal, Victim, or Worker?*, 7.

3.5 Incentives and sanctions for programs, including court obligations

Programs use a variety of sanctions or incentives to encourage defendant/participant engagement. For instance, the Dallas PRIDE Court employs a point system to reward compliance with program mandates; defendant/participants receive a \$10 gift card to Walmart for every six points they accrue. The CATCH Docket in Columbus provides a list of compliance incentives in its program material. These include: 1) encouragement and praise from the CATCH judge; 2) a reduction in probation appointments; 3) encouragement to work on positive activities that the participant enjoys; 4) small tokens to mark the participant's accomplishments, such as certificates, focus keys, watches, or scrap books; 5) other positive words or gestures as deemed appropriate by the CATCH staff; 6) participation in and support from Doma International [an NGO that organizes "monthly group activities outside of Court that foster self-esteem and camaraderie."]⁶³

Sanctions for non-compliance (e.g., not showing up for court date, failing drug test, missing a session) vary in intensity, but most programs that use them have graduated sanctions. Sanction decisions are often determined by the judge or prosecutor, but can be influenced and lightened by a case manager or public defender and discussed during program staffing meetings. Some programs, like the SAFE Court in Houston, have a preset rubric for sanctions. Others, like the HTICs in NYC tend to extend mandates and re-set court dates when defendants are non-compliant, which is perceived as non-punitive by court officials but which is often experienced by defendant/participants as threatening and can exacerbate their uncertainty and anxiety about if they are clear of re-arrest or sentencing.

Common sanctions include increased drug testing, additional court visits, counseling sessions, judicial admonishment, essay writing, community service, phase demotion, electronic monitoring and geographical restrictions, jail time, and termination from the program. Failure to comply with program requirements does not necessarily result in sanctions, since most judges have considerable discretion in determining when punishment is appropriate. Some judges questioned the efficacy of punishing defendant/participants for non-compliance and expressed a strong preference for minimal sanctions. For instance, Austin's Phoenix Court has a rubric of graduated sanctions that the judge has simply decided not to use. Finally, while pre-arrest and pre-booking programs generally do not employ the common sanctions described above, they often do have policies in place to respond to noncompliance: in some LEAD-based programs, for instance, failure to complete the initial intake assessment within the specified date range may trigger the underlying misdemeanor charge that could result in criminal proceedings.

Absconding or no-shows in court do not always result in removal for a PDP but can result in warnings, financial sanctions, bench warrants, and re-arrest with possible jail time. Financially, some programs, like the now defunct program in Detroit, charge \$500 for program failure; other programs, like the one in Wilmington, agree to waive fines when defendant/participants complete the program but not if they fail. Bench warrants are common, with many programs reporting that extensive non-compliance or no-shows require judges to issue bench warrants, which can then later result in re-arrest and even extended jail time.

3.5 The (limited) role of harm reduction principles in PDP programming

In the context of sex work, harm reduction has evolved into an important aspect of service provision. Harm reduction efforts fall into several primary groupings, including education, empowerment, prevention, and accountable and appropriate care.⁶⁴ Many sex work harm reduction strategies attempt to

⁶³ Franklin County Municipal Court, *Changing Actions to Change Habits (CATCH) Program Description*, available at http://cjinvolwedwomen.org/wp-content/uploads/2016/12/CATCH_Program-Description.pdf.

⁶⁴ Rekart, "Sex-work harm reduction."

mitigate the spread of HIV and STIs, and reduce violence, unwanted pregnancy, and stigma.⁶⁵ Some sex worker groups consider the removal of criminal penalties as an essential aspect of a harm reduction approach.⁶⁶

Across PDP programs, harm reduction strategies are often not explicitly invoked, and rarely comprehensively engaged, but if they appear they are most likely to have educational and empowerment components integrated into counseling or coursework. Prevention and care aspects are commonly provided through referrals to healthcare testing and treatment services. For example, Chicago and Corpus Christi programs seek to use some harm reduction methods for sex work as well as drug use, in that they cover general sex and drug education, as well as more specific information on needle safety and condom negotiation. Other programs provide access to medical interventions like pre-exposure prophylaxis (Corpus Christi) or methadone maintenance (Austin, Wilmington, and Corpus Christi by referral).

Peers or former sex workers facilitate the educational and behavioral sessions in Sacramento, Los Angeles and Houston. Other programs integrate former defendant/participants in aspects of housing (Shreveport), mentoring or encouragement (Corpus Christi, Tucson) and feedback (Dallas' PRIDE program). A former sex worker operates one of the service providers in Cincinnati, which provides wrap-around services.

We did not hear much about oversight mechanisms for holding people involved in providing social services accountable for their practices, although some programs did provide guidance and course correction to service providers in response to defendant/participant feedback (discussed in more detail below).

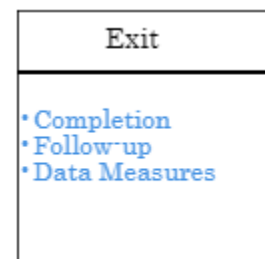
Additionally, many service providers were religiously affiliated. Some of these providers make a point of ensuring that their programming and perspective is secular and appropriate for non-religious defendant/participants (Chicago). Others, however, use explicitly religious narratives to frame their service provision. In Fort Worth, one service provider, a Christian ministry called The NET, pairs program defendant/participants with Christian "advocates" for mentorship and relationship-building. The NET, which is loosely affiliated with Purchased: Not for Sale in Shreveport, seems to encourage these advocates to discuss religious topics with their defendant/participants. However, generally speaking, it was difficult to ascertain the degree to which religious affiliation influenced the services provided without visiting the providers in person.

4. Exit

Completion of programs often requires completion of the full number of phases, one's individual contract or goals, or the required curriculum or treatment program.

4.1 Completion features

Some programs have set lengths, like the PRIDE court in Dallas, Texas, which is



⁶⁵ Rekart (ibid.) writes: "Successful interventions include peer education, training in condom-negotiating skills, safety tips for street-based sex workers, male and female condoms, the prevention-care synergy, occupational health and safety guidelines for brothels, self-help organisations, and community-based child protection networks."

⁶⁶ Sexual Health and Rights Project & Law and Health Initiative, *Fostering Enabling Legal and Policy Environments to Protect the Health and Rights of Sex Workers: A Report from Johannesburg, South Africa* (New York: Open Society Institute, 2006), available at http://www.sexworkereurope.org/sites/default/files/resource-pdfs/fostering_enabling_legal_and_policy_environments_to_protect_the_health_and_human_rights_of_sex_workers.pdf.

twelve months, while others are not fixed and may vary depending on the defendant/participant's requirements, needs, or engagement, as determined by the program providers. For example, the Los Angeles program requires *eight*, hour-long sessions for first-time offenders and *eighteen*, hour-long sessions for repeat offenders. Court staff or the judge typically certify completion of the program and dismiss the charges *at their discretion*. The majority of pre-adjudication programs reported dismissal of charges following program completion. In some cases, such as the NYC HTICs, defendant/participants were granted an adjournment in contemplation of dismissal after completing their service mandate and were required to go six months without re-arrest before charges were dismissed and sealed. Some post-adjudication programs, like the one in Wilmington, did not report dismissal of charges. The Fort Worth program reported dismissal only when a defendant/participant was given deferred adjudication.

Case managers and service providers are responsible for providing verification that defendant/participants have completed what is required or agreed upon. Completion is sometimes accompanied by a graduation ceremony (e.g., Dallas PRIDE Court). The LEAD-inspired programs technically have no program completion since defendant/participants may enter, leave and rejoin programs or services after an extended absence.

4.2 Barriers to completion

Reported barriers to program completion include burnout or frustration with program requirements, inadequate or unreliable housing for defendant/participants (as noted above in Section 3.1), lack of readiness to leave sex work, and drug use or addiction. Some programs reported high rates of absconding after the initial court referral and prior to the initiation of services. Failure to complete the program typically results in one of several different forms of punishment depending on the program: a bench warrant (most likely followed by jail time if the individual is unable to post bail), a return to traditional court processes, prosecution or sentence on one's original charge, termination from the program, or lesser sanctions. The two most common responses we found nationally are bench warrants or returning someone's case to the traditional court process.

These types of sanctions result in increased criminalization because defendant/participants end up spending time both in jail and the programs than they would have otherwise. If someone is re-arrested prior to completion, they may face termination from the program, a re-referral to the program, grouping of their new charge with their old charge, or jail time. Grouping charges while keeping someone in the program can result in increased program requirements or duration, but may or may not explicitly make the program last longer. Most courts emphasized during interviews that failures and rearrests were handled on a largely case-by-case basis.

4.3 Measuring success and data tracking

Most PDPs reported measuring success by counting the number of people enrolled into the program, completion rates (often measured by requirements), and recidivism. At the time data were collected in 2016, a few programs reported being too new to have established measures (e.g., Houston) or reported not measuring anything (e.g., Corpus Christi, Wilmington, and Detroit). In addition to measuring success by these three primary measures, other courts tracked data on linkages to community services (e.g., Sacramento), time sober and crime-free (e.g., Fort Worth), independent housing and employment (e.g., Fort Worth), dismissal from the program, length of stay in the program (e.g., Hartford), exit from sex work (e.g., Los Angeles), and relationship between current record and prior charges or arrests (e.g., Hartford and Columbus).

Court staff most often determine measures of success. Rationales for measures used were not apparent for most programs, except for Hartford, which derived metrics from those available in their database, and the pre-booking program in Huntington and pre-arrest program in Atlanta/Fulton County, which adapted their success measures in part from LEAD in Seattle. Seattle LEAD measures include looking first at recidivism, followed by criminal and legal system utilization, cost-effectiveness, and impact on psychosocial, housing, and quality of life measures.⁶⁷ The Atlanta PAD focuses on reducing any contact with the criminal justice system as a major correlate of success.⁶⁸ At the time of our research, only a handful (five or six) programs had or were planning evaluations conducted by an outside third party: Sacramento, Houston, Columbus, Minneapolis, and Seattle. Evaluators include the International Institute for Innovative Instruction at Franklin University, several institutions at the University of Washington, the University of Michigan, and the University of Minnesota, and Sam Houston State University.

4.4 Program defendant/participant follow-up

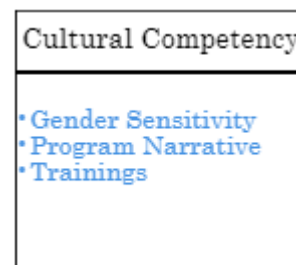
Follow-up with defendant/participants subsequent to program completion was largely unclear or non-existent for most programs.

LEAD-affiliated programs all provide continued availability of services, but no formal follow-up support. A number of programs allow defendant/participants to informally contact court staff for referrals to services. Some court staff, like those in Dallas, report having established trusting relationships with defendant/participants, who stay in contact with PDP staff after completing the program. Columbus evaluates all outgoing defendant/participants for aftercare, but service providers determine the nature of the follow-up care. A few service providers, such as Coastal Bend Wellness Foundation in Corpus Christi, Purchased: Not for Sale in Shreveport, CASH in Sacramento, and Journey Out in Los Angeles, continue to offer referrals and other services after completion. In Wilmington's probationary program, each defendant/participant receives a detailed discharge plan.

Defendant/participant feedback is not formally collected or considered in the majority of PDPs contacted in this study. One exception is the program in Sacramento, which has a questionnaire for defendant/participants upon completion.

5. Cultural competency

PDP cultural competency includes trainings of staff and other court affiliated individuals; the framework or narrative used to define or address defendant/participants; language interpretation and literacy; and gender sensitivity.



5.1 Trainings offered on cultural competency

Most PDPs were unable to report having arranged specific trainings for court staff, police officers, or service providers, including sex worker specific training. This was particularly true at the court staff level, where many programs reported that judges and other court officials had not received any training for working with the sex worker population. A few PDPs reported prior trauma or domestic violence training, but these were not arranged as a component of the program. A notable exception is the program in Chicago, which brought in the Center for Court Innovation to provide a short training to court staff.

⁶⁷ Information on the LEAD measures is drawn directly from Susan Collins, Heather Lonczak, and Seema Clifasefi, *Lead Program Evaluation: Recidivism Report* (Harborview Medical Center: Harm Reduction Research and Treatment Lab University of Washington, 2015).

⁶⁸ Atlanta/Fulton County Pre-Arrest Diversion Initiative, "Learn About Pre-Arrest Diversion," accessed 31 Aug. 2018, available at <http://prearrestdiversion.org/learn-about-pre-arrest-diversion/>.

However, the judge who received this training was ultimately not assigned to the PDP. Additionally, the primary service provider in Chicago previously conducted outreach and education to sex workers.

Service providers are far more likely than court officials to report training in trauma-informed care. Some service providers also report trainings on human trafficking, motivational interviewing, domestic violence and sex crime victims, substance abuse, and mental health. It is unclear in most cases whether trainings are components of the program or conducted independently by service providers. For programs that are not run by a specialized court (i.e., court sections that handle general misdemeanors), a high volume of other cases may make it difficult to provide training.

Among police, programs mostly report *training on the identification of trafficking victims*. A few programs, most notably the post-booking program in Sacramento and the pre-arrest and pre-booking programs in Atlanta/Fulton County and Seattle, reported more extensive police training including trauma, mental health, substance abuse, or motivational interviewing. It is also unclear, except in the pre-arrest and pre-booking programs, whether these trainings for police are an official component of the program.

5.2 Narratives utilized to describe defendant/participants

PDPs develop and use specific frameworks or narratives in order to define defendant/participants and create specific program end goals that may not align with those defined by sex workers themselves. As such, we include the fit of the narratives with the needs of the defendant/participants as part of an assessment of cultural competency. These narratives incorporate both the ways in which PDP staff view the purpose and goal of their program, as well as how these views shape how staff perceive or speak about defendant/participants. Three different narratives became evident in this research.

The first narrative revolves around the notion that no one would ever wish to engage in sex work, making the purpose of a PDP to assist defendant/participants in exiting the sex industry. An example of this type of narrative can be found at the website for Project ROSE in Phoenix.⁶⁹

The second narrative utilizes a “victims” or “human-trafficking” framework, which attempts to remove blame from defendant/participants but also implies that they need rescue or assistance. Examples of this include Sarasota’s Turn Your Life Around program, Cleveland’s Human Trafficking Court, the Columbus CATCH Docket, New York’s Human Trafficking Intervention Courts, and Los Angeles’ Prostitution Diversion Program. The majority of programs fall within these first two frameworks.

The third framework revolves around making sex work safer, including through reducing contact with the CJS, and recognizing the full range of reasons individuals enter sex work, including by choice. These include Atlanta/Fulton County’s Pre-Arrest Diversion program, Sacramento’s RESET program, and the Red Cord Program in Corpus Christi. Select programs allow for the recognition of choice in more implicit ways; in the case of the programs in Chicago and Austin, funding requires the use of a human-trafficking narrative, while staff within these programs are less likely to exclusively label defendant/participants as victims.

Additionally, while some programs recognize a greater number of reasons why individuals enter the sex industry, they often conflate “circumstance” solely with substance abuse or mental health issues. A number of these programs specifically target individuals with both substance abuse issues and prostitution-related criminal charges (Dallas PRIDE Court). Other programs, like the community courts in

⁶⁹ Project Phoenix, "FAQs about Prostitution," accessed 28 April 2016, available at <http://www.projectphoenixwebsite.com/faq.html>.

Providence and Hartford, serve defendant/participants with a larger range of charges and are therefore less likely to use “victim” language explicitly, but were still likely to refer to their defendant/participants as compelled by circumstance, often substance abuse, mental health, or poverty.

These narratives are a crucial aspect of program cultural competency because they also shape the models for services and criteria for success that programs chose to implement. Specifically, select programs aim to remove those categorized as victims of trafficking from participation in PDPs. These programs include those in Austin, Shreveport, Houston and Dallas. Other programs keep individuals deemed human trafficking victims in the program but refer them to special services. This takes place in Chicago, Corpus Christi, and Omaha, Nebraska.

Other programs, like those in Sarasota and Cleveland specifically seek out defendant/participants that are victims of human trafficking, excluding defendant/participants if they are not identified as having a history of trafficking. Unfortunately, assessing whether one is a victim of human trafficking is often highly variable, especially given the lack of uniform understandings of what constitutes “trafficking” as a matter of law, deeply subjective interpretations of these laws, and the difficulties in establishing rapport with defendant/participants. Some programs use screening tools to specifically address human trafficking, but we were unable to obtain information or copies of these. It should be noted that there are a range of valid reasons for why trafficked persons may not want to be identified by the state (e.g., if they have noncitizen status and fear contact with immigration systems).⁷⁰ Moreover, as the assessments in the GHJP report on NYC’s HTICs makes clear, all defendant/participants should be screened for their range of needs and rights violations, and access to social services should not be contingent on a “trafficking victim” status; thus, screening for the purposes of “trafficking” identification is not only unhelpful, but may have unintended negative consequences and create additional barriers to accessing services.⁷¹

5.3. Sensitivity and capacity to serve subpopulations

In regards to language capacity and interpretation, the majority of programs report having few or no non-English speaking defendant/participants. The largest language needs reported are for Spanish (Corpus Christi, Sarasota, Aurora, and Atlanta), while programs in larger cities such as Los Angeles, Chicago, and New York City deal with more racial and ethnic, cultural, and linguistic diversity amongst defendant/participants. Most courts report having interpretation services available, while service providers report greater difficulty in this area. Most had Spanish-speaking staff members available if needed. The Los Angeles program reported a partnership that allowed sessions to be provided in Mandarin or Korean.

While not addressed systematically in all interviews or included in our comprehensive questionnaire, questions around defendant/participant literacy were often reacted to with uncertainty or confusion, highlighting a gap in awareness of both literacy and functional literacy within the context of these programs. In Chicago, service providers described verbal presentation of all information in all contexts. It was more difficult to assess whether this type of assistance was being provided to defendant/participants in other programs.

PDP capacity to handle individuals with physical and intellectual disabilities was not systematically addressed. In Chicago, staff mentioned that several defendant/participants may have had limited intellectual and developmental capacities that were not disclosed or addressed. Some programs, like

⁷⁰ Miller and Zivkovic, “Orwellian Rights and the UN Trafficking Protocol.”

⁷¹ Yale Global Health Justice Partnership, *Un-Meetable Promises*

STAR Court in Dallas, screened out individuals with “low intelligence quotients”. No program independently brought up issues around physical disabilities.

Gender sensitivity, including inclusive thinking beyond conventional gender expressions and identities, in PDPs was not common. Some programs explicitly exclude men (Sacramento), transgender defendant/participants, or both (Fort Worth, Dallas STAR Court). In some programs, persons identified as male and transgender defendant/participants are not explicitly excluded, but programs report never having the opportunity to enroll non-female participants (Houston, Chicago, Sarasota). This type of disparity may reflect local policing practices or how individuals’ genders are identified for the program (i.e., via lists coming from arrests or the women’s prisons, where there is potential for misgendering, rather than via self-identification). Programs such as the NYC HTICs, in which transgender women (particularly women of color) appear to be overrepresented relative to the general population, may also be indicative of policing practices – in this case, the disproportionate targeting of the streets and profiling of people who “look like a sex worker”.⁷² In the case of NYC, there is little attention to the gender- and race-specific experiences, challenges, and needs of these defendant/participants.

⁷² Yale Global Health Justice Partnership, *Un-Meetable Promises*, 34, 44, 46; Dank, Yahner, & Yu, *Consequences of Policing Prostitution*, 6.

III. Analytical review of PDPs in the United States

The previous section of this report assembled a provisional mapping and taxonomy of PDPs across the country and set out a systematic framework for cataloguing the diverse practices that exist with regard to the background/early development, entry processes, service requirements, exit processes, and cultural competency of the programs that we reviewed. The diversity of practices, as well as the highly subjective assessments of needs and arbitrary practices of service delivery (ranging from religious narratives of salvation, to coercive HIV testing, to more harm reduction-based safe drug injecting education), is notable.

Many programs, representing several different models and frameworks, claim to have an unequivocally positive impact on sex workers. Notably, avoiding time in jail is a benefit corroborated by many former defendant/participants interviewed in this project.

However, when analyzed against the practices and principles of the larger criminal justice system, the benefits of PDPs are more limited—and not only are benefits limited, but the possible harms to rights and health built in to the program design and implementation become visible as potentially significant.

We flag here some points that arise in considering the design of the programs and their histories. This analysis is meant to be *suggestive of areas of further research* and not a definitive statement of harms. Nonetheless, the apparent risks are notable in terms of both individual effects on rights and health, and also on key principles of criminal justice. The potential of these risks requires much more sustained attention: research, evaluation, and public accountability for all court programs claiming to “divert” or intervene will be key. As studying municipal-level CJS systems may be challenging, the gender- and race-biased histories of the operation of these systems vis-à-vis persons arrested under low-level prostitution law offenses suggests this is important and timely research to support the current wave of CJS reform work.

- *A primary risk arises because* these various court-mandated processes are inherently coercive in their provision of services. Rather than strengthening independent resource allocation, which would encourage service providers to provide services as needed to a population to which it would be accountable, PDPs use control (of liberty and of resources) as a tool to compel treatment, thus disempowering sex workers.
- *Secondly*, PDPs—particularly when derived from drug court or mental health court models—follow incoherent and ungrounded models: many seek to “treat” sex work as if it were primarily a behavioral (pathological sexual conduct) concern, rather than treat sex work as the livelihood strategy adopted by often constrained actors. This latter understanding would lead diversion actors to adopt a harm reduction approach that would better enable sex workers to determine their lives, including through avoiding violence and HIV and other health risks in the sex trade. The drug court model approach means that many PDPs are poorly equipped to deal with the substantive, material, and everyday needs of sex workers and cause additional harm to the lives of sex workers.
- *Finally*, this form of intensive court involvement fails as actual diversion from the stigma and control of being CJS-engaged. It is unlikely to provide the changes to the criminal justice system that many social justice advocates seek: decreasing policing powers over the poor in particular

and reducing incarceration in either jails or prisons. Rather, PDPs further entrench people arrested for low-level prostitution crimes (whether they identify as sex workers or not) under the jurisdiction of the municipal criminal justice system. Local criminal justice practices (especially around misdemeanors) are particularly difficult to analyze. Because any engagement the criminal justice system often results in additional harm to sex workers (whether through abusive policing, the loss of control over one's life driven by another CJS actor, and/or through the more obvious issue of jail time and criminal records), extending CJS involvement under the rubric of "helping people in the sex trade" is also at odds with the stated "empowerment" goals of PDPs themselves.

In this section, we take up these three themes and draw out a closer analytical look at the ways in which PDPs currently fall short or fail to honor basic tenets of social justice that, in most cases, they purport or claim to uphold. We rely on a few key themes in assembling a rubric of assessment for PDPs:

- 1) **Human Rights and Dignity**, which includes the importance of self-determination, empowerment, and autonomy for sex workers and aims to eradicate coercion from all diversionary programs.
- 2) **Health Justice and Ethics**, which includes ensuring the adequacy, accessibility, acceptability and quality of social and health services (AAAQ) and guaranteeing both the cultural humility and ethical conduct of institutions and providers.
- 3) **Justice**, which entails fair and clear adjudication; equal protection of law; and rights-abiding conduct of law enforcement and freedom from police or court staff abuse.
- 4) **Transparency, Accountability, and Sustainability**, which entails clarity and coherence around the goals of programming and their relationship to measures of "success" in diversionary programming; appropriate and confidential feedback collection and analysis; and public accountability that respects the voices of people most affected by diversionary programs.

In critiquing these programs, we acknowledge the dedicated experience and good intentions of many of the individual people who designed and maintain these programs. Many program advocates are experienced in working with this population and served their local sex worker community prior to the establishment of a program (such as CASH in Sacramento). Most, if not all, program interviewees also expressed a desire to help sex workers and avoid punishing them, and some former defendant/participants positively described stabilizing relationships they were able to cultivate with their service providers. In our in-depth interviews, we also recorded many positive individual experiences and relationships cultivated between service providers and PDP defendant/participants.

However, all court-affected persons ought to be able to be treated with respect and connected with services: it is ironic that "special programs" are needed to convey respectful treatment of defendant/participants. Moreover, with our analysis we aim to understand and explain why the inconsistent, ad hoc and often opaque rhetoric of prostitution diversion programs mask troubling practices that may threaten the rights, dignity, and well-being of individuals engaged in sex work. These threats to dignity arise, whether the persons in these courts came to the sex trade sector by "choice, circumstance, or coercion."⁷³ In developing this analysis, we rely substantially not only on our own observations and research, but also on interviews with former defendant/participants, which provided us with impressions, perspectives, and experiences of individuals who have actually gone through PDPs.⁷⁴

⁷³ "The Sex Workers Project provides client-centered legal and social services to individuals who engage in sex work, regardless of whether they do so by *choice, circumstance, or coercion*" [emphasis added]. Sex Workers Project, "About the Sex Workers Project," available at <http://sexworkersproject.org/>.

⁷⁴ Former PDP defendant/participants are, for the most part, not identified by program or location in order to guarantee confidentiality.

While it is important to recognize the individual-level benefits gained in particular circumstances, we echo other scholars, advocates, and service providers in expressing concern about the ability of PDPs, on a systems-level, to fulfill their “decarceral” mission/objectives.⁷⁵

1. Many of the PDPs reviewed do not promote the **human rights and dignity** of sex workers (i.e., their self-determination, autonomy, and empowerment) because coercion is built into their program design and implementation.

Services that promote sex worker self-determination and autonomy must be free of coercion. We define coercion as force or threat of force that impinges on the ability of someone to choose a course of action freely. Because of the way PDPs operate, they are inherently coercive, both at the (1.1) entry stage and (1.2) during service provision.

(N.B. While coercion is explicitly covered as a violation of the human rights and dignity of sex workers in this subsection, the coercive nature of PDPs also affects all aspects of PDPs described in this section, including health justice and ethical dimensions of PDPs; programs’ abilities to guarantee fair and clear adjudication; and the transparency and accountability of programming.)

1.1 Coercion upon entry

By design, most PDPs hold the threat of jail time and/or fines as an incentive to enter the program. The punitive extent of these sentences varies and is often subject to mandatory minimums. In Fort Worth, program administrators mentioned that at least one defendant/participant had accumulated multiple offenses and was facing life in prison. Some program administrators admit to the importance of the length of the criminal sentence in persuading a defendant/participant to enter the program. In Atlanta and Chicago, the program team noted the challenge in convincing defendant/participants with misdemeanor charges to participate; the team said that felony charges are “more conducive” to convincing defendant/participants to enter a longer and more substantial program.⁷⁶

The threat of criminal sentences and the design of the program in the shadow of incarceration can lead to high uptake rates. Former defendant/participants interviewed over the course of our research suggested that anything was preferable to jail. One individual noted, “I know that if I don’t go to sessions it would be thirty days in jail that’s what I think I remember...which would be only 15 days, but who the hell’d wanna go to jail? [I told myself that] I’m going to do these sessions wherever they are.” Another individual exclaimed, “Whatever got me out of [jail], I am willing to do that! Community service, paying a ticket, whatever as long as I don’t go to jail!” In this way, uptake rates reflect at best the “best of bad options” decisions in the context of an abusive and discriminatory CJS, rather than decisions taken in the context of a rational CJS; they therefore do not reflect the relevance of the program to the underlying needs or interests of defendant/participants.

⁷⁵ Gruber et al., “Penal Welfare and the New Human Trafficking Intervention Courts,” 51; Shdaimah, “Taking a Stand in a Not-So-Perfect World”; Ray and Caterine, *Criminal, Victim, or Worker?*

⁷⁶ Confidential interview with key informant. 29 March 2016.

Project RAISE in Tucson brings this distinction to the foreground while also implicating fair and transparent adjudication (discussed in more detail below). Project RAISE has an estimated entry rate of 90% of those eligible and arrested through biannual police *stings* (even though our contact estimated completion rates are only around 33-50%).⁷⁷ After arrest, defendant/participants are brought to a processing site (a church), where they meet with a former sex worker (called an “advocate”) and are brought before a judge and prosecutor.⁷⁸ At that point, defendant/participants may be offered the PDP.⁷⁹ Although defendant/participants can ask for a public defender, the public defender is not present at the processing site.⁸⁰ It is unclear whether defendant/participants are aware of their right to a public defender.

1.2 Coercion during program participation

Coercion can also manifest during program participation in a variety of ways. For example, the program might use the threat of court or other sanctions to exert control over defendant/participants’ lives. In Sarasota, Dallas, and Fort Worth, the programs used their coercive power to regulate personal relationships and other social interactions for defendant/participants. The provision of services such as housing through a PDP can also be coercive since failure to participate in, comply with requirements of the program, or complete the program may have adverse consequences for individuals, as losing their residence becomes a penalty on already vulnerable populations. Additionally, when defendant/participants missed a court appointment, judges often issued bail bonds. These bail bonds can result in arrest and additional jail time that coerce defendant/participants into compliance.

Many former PDP defendant/participants acknowledged the coercive nature of their participation, noting that individuals needed to “submit” or surrender to program requirements in order to complete its requirements. Some welcomed structure and the imposition of requirements. One individual remarked that she “do[es] good with structure” and appreciated the “tough love” of her counselor, and another noted that “without any structure it is hard to overcome certain things.” She went on to describe how “at first [...] you’re not used to having structure. Cause you’s used to doing what you want to do [...] You have to get out of that habit and that mold of doing what you want to do and follow these rules.”

Yet other defendant/participants were more equivocal about the ways in which program requirements affected their agency and autonomy, describing how court staff and providers tried to “shape” and “mold” their behavior, sometimes against their will. One defendant/participant stated, “I didn’t feel like I had any say over anything [in court],” while another described having to “literally, eventually, bow down and do as the program says to do,” especially when it came to living in the temporary housing she occupied. A third defendant/participant noted the particularly intense coercive nature she noticed in her program:

A lot of times I’ve known how to deal with the things I am going through in court, it’s just hard to cope and deal with it in a healthy in manner like how I’ve learnt to when you have pressure on you. When you feel like the courts are breathing down your neck and not give you any room to move or even do the right thing. You know? They just see it one way and that’s their way.

She went on to describe a different local social service organization that she had a connection to outside the court system where, noting:

⁷⁷ Confidential interview with key informant. 9 March 2016.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

Just by their moral support and their encouragement [they] have helped me to be able to slow down and gain my piece of mind back to make the healthy choices I know I need to make in order to progress and not to just give up. Really [...whereas] it gets to the point a lot in the court program, that I want to give up.

The same individual notes that she doesn't like how the courts treat people like her, "step[ping] outside of what [she] feel[s] is their jurisdiction and try[ing] to control [their] lives" through "stipulations on [their] lifestyles."

Self-determination as a principle ultimately requires service providers to provide the services that sex workers want and need. However, fear of detention coercively keeps people in PDPs even if they are not receiving the services they need. Defendant/participants may be afraid of the consequences of not completing the program, such as jail time, fines or the negative impact on their record. It was difficult to assess this effect during this phase of research since we did not interview program defendant/participants at the time that they were *in* the PDP, only afterward. However, it seems clear that program defendant/participants attempt to complete programs even if those programs provide only a behavioral component and do not address their structural needs such as housing or substance use treatment. As discussed below, this is problematic because it does not address the adverse circumstances in which sex workers may find themselves.

Pre-booking programs differed in their levels of coercion in program participation. One individual who participated in a pre-booking program described the difference this way:

The whole point of the [pre-booking diversion] program is kinda dangle, dangle that criminal charge in front of you, like 'Hey, don't forget this is on the back burner.' But see, they are not affiliated with DOC [Department of Corrections] at all. A lot of people think that this is a program that is affiliated with the police and the probation services, but it is not. They're not, they are with [the local social service provider], they are affiliated with the people who run the methadone clinic. You're not going to be violated or anything if you don't do shit. You're just not going to get better. You're just not gonna accomplish nothing.

This observation illustrates two important points. First, pre-booking programs may serve as an important alternative to post-booking programs in terms of reducing court and criminal justice system involvement in program entry and participation. Since these programs refer to services before booking, they do not use actual charges to coerce participation. But second, although pre-booking programs may offer a promising alternative, they are not free of coercion themselves. Without adequate oversight and training, law enforcement agents are still able to "dangle" criminal charges outside of the courtroom, before or even without arrest. Police officers might use their discretion to arrest or refer to target vulnerable or stigmatized populations (e.g., exchanging sexual favors for a referral rather than arrest).

Whether embedded in the PDP entry process or program requirements, coercive entry policies prevent sex workers from meaningfully determining their involvement in any kind of service or resource provision. And whether defendant/participants interviewed in this study appreciated the structure of their PDP or rejected the regulation and surveillance by the criminal justice system altogether, they almost universally agreed that only a social service program in which individuals autonomously and voluntarily entered and participated would be fair and effective.

"You get out of it what you put into it," one defendant/participant commented, and another remarked that "you have to be willing to come in and be part of it." A third defendant/participant thought that if there were more intensive requirements in her program, there would be fewer interested in taking

advantage of the services and resources available. A fourth who was enrolled in a pre-booking program reflected:

A lot of times when you are forced to do something you don't go. They don't expect anything. They expect you to do what you're comfortable with and that's the best thing that I have found. If you are not ready to quit then okay, you know, that's cool. You are still welcome to come drink coffee and hang out [...] they don't judge. I know that.

Positive feedback on PDPs that were *less* invasive and coercive, as captured by this individual's observation, bolsters the point that coercion not only abridges the rights and freedoms of sex workers, but also leads to less effective and long-lasting resources to reduce harm in sex work and ensure physical, social, economic, and psychological well-being of those engaged in the sex trade.

Lastly, coercion in program entry and during participation erodes sex worker dignity by reinforcing unhealthy power dynamics. Instead of empowering sex workers through a harm reduction approach, "rescue" and "victim" narratives create practices that continue the power imbalances from which they claim to be liberating defendant/participants; ultimately, they compromise sex workers' ability to make independent choices. And for those individuals who have not entered the sex trade willingly, coercive and demanding programs "can feel very similar to an abuser," noted one social service provider (whose location will not be identified to protect anonymity). Clear structures and obligations are necessary, but the balance between necessary "toughness" and coercion is a fine one, dependent on broader commitments to defendant/participant-centered care, not neoliberal notions of system "efficiency".⁸¹ Degrading treatment that fails to empower defendant/participants "is not trauma sensitive" and "makes [defendant/participants] feel like victims, like they don't feel in control of their lives."

2. Many of the PDPs reviewed do not protect the **health and well-being** of sex workers; they fail to provide available, accessible, acceptable, and quality health and social services to sex workers. Some violate **ethical guidelines** for service provision through failure to guarantee confidentiality and appropriate forms of medical treatment, while many more are neither prepared nor incentivized to prioritize engagement with structural issues affecting sex workers.

The health and well-being of sex workers must be protected through services that fulfill what the international and national bodies have articulated as the four central tenets for service provision: availability, accessibility, acceptability, and quality (known as the 3AQ model).⁸²

Availability means that services are functioning and in sufficient quantity. Accessibility entails services that are non-discriminatory, physically reachable, and economically affordable. Acceptability requires services to be respectful of medical ethics; function with a sense of cultural humility; and operate with sensitivity

⁸¹ Leon and Shdaimah, "JUSTifying Scrutiny: State Power in Prostitution Diversion Programs."

⁸² World Health Organization, "Right to Health Fact Sheet, Joint Fact Sheet WHO/OHCHR/323," August 2007, available at http://www.who.int/mediacentre/factsheets/fs323_en.pdf.

to gender, race, ethnicity, disability, and other forms of social/identity difference. Quality means that services must be scientifically and medically appropriate.⁸³

While we encountered many service providers and administrators of PDPs that are well-intentioned and aim to service their clients in the best way possible, the situation of service provision within the criminal justice system makes it difficult to serve sex workers in a way that meets the standards enumerated above. As described below, availability, accessibility, acceptability and quality are all compromised in some way when social and health services are provided through the criminal justice system.

2.1 Availability and accessibility: Failure to ensure cultural competency

The first two components of the 3AQ model require that services are not only adequate in number, but also non-discriminatory and accessible to a wide range of recipients (in this case, program defendant/participants). However, in observing many program processes, we noticed a wide-ranging failure to integrate cultural competency into the practices and conduct of court staff and service providers, meaning that existing services may be both inadequate and even outright discriminatory.

For instance, the Queens and Midtown HTICs in New York City do not have enough interpreters to match the high number of Mandarin- and Korean-speaking clients on their dockets, and it has been observed and noted by other service providers that judges have had to correct and call attention to interpreters not adequately interpreting on behalf of defendant/participants. This extends into the service provision segment of the program. Although there are some service providers linked with these courts that have foreign language capacity, there are not enough of them to handle the high volume of cases involving non-English speaking clients. As of the time this research was conducted, the service providers linked with the Midtown court do not have counselors that speak Spanish.

A lack of gender sensitivity in program design and implementation was also common in PDPs across the country. Even programs that accommodate cisgender men or transgender defendant/participants frequently fail to ensure that programming is culturally competent with respect to gender identity. Since PDPs are often designed with cisgender women in mind, certain court or service providers seemed confused about how to address transgender defendant/participants appropriately. Housing was sometimes not available for cisgender men or transgender women defendant/participants. In the now-defunct Fresh Start program in Detroit, which relied heavily on jail time for initial detoxes and sanctions, transgender women were not permitted in the women's jail and instead were housed in the high-security jail for dangerous offenders, where they were kept in segregation.

Additionally, during in-person observations in the Phoenix Court in Austin, group members witnessed court proceedings that misgendered a transgender individual. Specifically, the judge repeatedly referred to a transgender woman defendant/participant as "sir." This individual was also singled out to have her urine sample collected by a male staff member in the men's restroom.

Language interpretation services and gender sensitivity are both essential forms of cultural competency and also a "bare minimum."⁸⁴ As described in the section below on fair and clear adjudication, defendant/participant experiences in court and in social service contexts suggest that cultural humility is also lacking—that is, both law enforcement and service providers sometimes actively reinforce

⁸³ Ibid.

⁸⁴ Conversation with Jessica Peñaranda, Urban Justice Center, Sex Workers Project, August 2017.

stereotypes and fail to recognize intersectional (for instance, inter-connected gender, age, race and health status) forms of oppression faced by sex workers.

2.2 Acceptability of services: Failure to meet ethical standards

It is critical for all service providers and court staff involved in a program to have knowledge about the lives of sex workers and to follow accepted ethical practices in providing services to sex workers that are grounded in self-determination, as described above.

We observed several instances of court personnel and service providers failing to demonstrate adequate knowledge about key issues affecting sex workers. For example, some programs in Texas failed to incorporate biomedical approaches to addiction. These programs tended to refer defendant/participants to substance abuse programs that do not use effective harm reduction strategies such as providing methadone or buprenorphine.

We also observed practices that are not consistent with professional standards of ethics for social services provision. For example, the PRIDE Court in Dallas and the SAFE Court in Houston have licensed clinical social workers on staff to provide court-facilitated counseling services. Although these social workers saw themselves as therapists, they did not maintain client confidentiality and disclosed details of defendant/participants' counseling sessions (including illicit drug use) during meetings with non-clinical court staff. These violations of confidentiality likely add to increased mistrust of mandated services and may deter sex workers from seeking services outside of the criminal context. In another instance, we found that one PDP in Dallas sends defendant/participants to a transitional housing program that requires residents to serve as unpaid labor in ballparks, where they sell beer and concessions in exchange for housing. Both PDP personnel and defendant/participants highlighted this arrangement as problematic and expressed concern about the safety of the housing facility itself, but the program has continued sending defendant/participants there because it lacks the resources to secure a more suitable arrangement.

These specific instances do not indict all courts or service providers. However, misdemeanor courts face large caseloads,⁸⁵ and most court personnel receive limited training specific to sex workers. Courts therefore seem to be inappropriate sites for service provision, with court staff often determining services and treatment plans for individuals without the appropriate training to do so and without an awareness of the importance of confidentiality in social and health service provision.

2.3 Quality of services: Failure to incentivize engagement with structural issues

Sex workers face many structural barriers to health and well-being, such as lack of housing, gender identity discrimination, immigration concerns, and substance use issues.⁸⁶ These structural barriers make sex workers a difficult and often vulnerable population to support. However, PDPs are typically not designed to engage with these kinds of structural issues for three key reasons.

First, these court programs have a large monitoring and surveillance function. Many programs operate in a manner similar to probation. The Fort Worth program requires random drug tests, which must be paid for by defendant/participants. Many programs also require defendant/participants to obey all laws or else

⁸⁵ Robert C. Boruchowitz, Malia N. Brink, and Maureen Dimino, *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts* (Washington, D.C.: National Association of Criminal Defense Lawyers, 2009).

⁸⁶ Shdaimah and Bailey-Kloch, "Can You Help with That Instead of Putting Me in Jail?"; Shelly A. Wiechelt and Corey S. Shdaimah. "Trauma and substance abuse among women in prostitution: Implications for a specialized diversion program," *Journal of Forensic Social Work* 1.2 (2011): 159-184.

face punitive measures. This function can be at odds with actually providing services. If a defendant/participant is afraid of criminal sanctions as a result of their behavior, they may be less likely to share information that would be helpful for providing services effectively. This surveillance function also creates a conflict for professionals such as social workers whom the system requires to participate in enforcement even though their roles require service provision.⁸⁷

Second, PDPs may treat sex work as an addiction or a behavioral problem, similar to treatment in drug or mental health courts, though there is lacking medical or social science research to support this assumption. These programs tend to focus on behavioral modification. As a result, the services may not address defendant/participants' actual needs or desires. One individual that we interviewed expanded on this problem at length:

Counseling isn't gonna do shit. Let's be real. Yeah, it helps with the emotional part but if you want a prostitute to get off the streets and away from her pimp, you gotta to give her money. Or help her financially. Because right now that's her only financial situation. That's her only means of survival. If she feels like that is the *only* way she's going to survive in this world, that's all she is going to do. Because that's the way the pimp makes it and portrays it... 'You're not good enough to go to college, you're not smart enough to get a job, not smart enough to get a degree.' That's how they make it seem [...] Oh yeah, I can sit here and talk about my feelings and how I feel about the situation but at the end of the day that's not going to keep me warm at night, that's not gonna put food in my belly, and that's not gonna pay my child's bills...This is the problem, they don't give a f*** about all that. They just want you to go through a program so it seems like they are actually doing something. No, you're not doing shit!

Finally, PDPs' success is often measured on completion rates, reduction in recidivism or exit from sex work. These are the types of statistics that are politically palatable. However, those statistics are not focused on the well-being of sex workers and do not account for how individual sex workers might measure success. One defendant/participant noted that even though the court staff running her program saw her effort and "wanted to help [her] in turn" in order to "help [her] keep progressing," it is "not always like that...because like I said, the court has its stipulations and its demands and you know, they have to be met." Moreover, these statistics may not actually capture the information they claim. Statistics are often self-reported and may reflect biases (e.g., a recidivism metric captures those who are arrested in that jurisdiction not those who continue in sex work but may be arrested in a different jurisdiction; therefore, this number cannot accurately project those who actually leave sex work). These metrics reflect programs whose goals do not include engagement with structural issues named as most critical to people in the sex trade sector. To our knowledge few programs actually track increased knowledge on HIV and linkage to social services.⁸⁸

3. Many of the PDPs reviewed discourage or fail to ensure full, fair, and clear adjudication by entrenching "diversionary" processes further within opaque local court processes and criminal justice systems generally.

The court "diversion" programs we describe arise out of a recognition that incarceration is not a sustainable or even universally desirable practice. They also claim to reflect a "transformation in thinking" whereby people recognize the humanity and dignity of offenders.⁸⁹ This shift does not mean, however,

⁸⁷ Wahab, "Evaluating the Usefulness of a Prostitution Diversion Project."

⁸⁸ Confidential interview with key informant. 14 March 2016.

⁸⁹ Confidential interview with key informant. 22 Feb. 2016.

that the criminal justice system gives up its control and regulation of certain groups.⁹⁰ In fact, prostitution “diversion” programs further entrench a criminal justice system response to sex work, and their murky, often inconsistent conditions and ad hoc practices contribute to less fair and less clear adjudication of cases. Initiation of a PDP within a local criminal justice system can also lead to increased and expanded policing rather than contributing towards decriminalization.

The observations below do not assume that the criminal justice system is itself, all else being equal, fair and transparent, or that policing practices outside of diversion programming are fair or unabrasive.⁹¹ The analysis that follows therefore is not about PDP *falling below* a CJS standard, but suggests that diversion programming can exacerbate already problematic adjudication processes.

3.1 So-called prostitution diversion programs lead to adjudicating in ad hoc and unreviewable ways, falling outside already problematic due process protections at the misdemeanor level

In many PDPs, the role of public defenders is diminished, which can lead to less fair adjudications. Public defenders may not have a seat at the table during program design, which can lead to their exclusion in the actual application of the program. Moreover, since many PDPs are built to be “non-adversarial” and promote a team model, public defenders may be placed in reduced roles.⁹²

As mentioned above, in Tucson, Project RAISE arrestees automatically see a prosecutor and judge but no public defender is provided; the defendant/participant has the additional burden of requesting a defender and then going to court for arraignment.⁹³ Until very recently, the Columbus CATCH Docket excluded defense attorneys from treatment team meetings unless a defendant/participant proactively requested that one be present in advance.⁹⁴ Since the Fort Worth program is post-adjudication, defense attorneys are not present at treatment meetings or in court unless a legal decision is being made. The lack of an advocate in these meetings presents different problems to the denial of counsel in the actual adjudication of the facts of the crime, but their absence (and the absence of counsel assessing the due process, liberty and equality issues arising in conditional treatment) may still lead to negative outcomes for defendant/participants.

If defendant/participants lack an advocate, the system may be more likely to act in a way that is contrary to their interests. In the context of chronic underfunding and large caseloads of public defenders in many jurisdictions,⁹⁵ this reduced role may not be surprising, but it is concerning for the due process rights of people arrested or facing charges under prostitution laws.

Several individuals we interviewed corroborated the observation that PDP defendant/participants may not necessarily understand what is happening to them as they enter and participate in programs. An individual describes how one night, she was picked up by an undercover cop, who “didn’t really explain much to [her] at first [...] They told [her] that there is a program. They told [her] that [she] could either do

⁹⁰ Ibid.

⁹¹ See, for instance, Issa Kohler-Hausmann’s work on mass misdemeanor adjudication processes in New York City. Issa Kohler-Hausmann, “Misdemeanor Justice: Control without Conviction,” *American Journal of Sociology* 119.2 (2013): 351-393; Kohler-Hausmann, “Managerial Justice and Mass Misdemeanors.”

⁹² Quinn, “The Modern Problem-Solving Court Movement.”

⁹³ Confidential interview with key informant. 9 March 2016.

⁹⁴ Confidential interview with key informant. 12 April 2016.

⁹⁵ Peter A. Joy, “Rationing Justice by Rationing Lawyers,” *Washington University Journal of Law & Policy* 37 (2011): 205-225; National Right to Counsel Committee, *Justice Denied: America’s Continuing Neglect Of Our Constitutional Right To Counsel* (Washington, D.C.: Constitution Project, 2009), available at <http://www.constitutionproject.org/manage/file/139.pdf>.

this program or if [she] refused they would take [her] to jail.” To get out of jail, she told them she would do it, but for a long time she didn’t visit her case manager or participate fully.

Another individual described how she didn’t truly understand the scope of the court’s power and involvement in her life until she entered the program:

I didn’t know they could do that type of stuff. If it’s not in my stipulations that you can order me to do something or that you could order me to not to do something and that I could go to jail if I didn’t. I didn’t know that. I had specific guidelines in my probation and that was all I had to go by. And then the rules of the program, which were attend IOP, report weekly, and complete all my assignments. You know? That was it. Until I got the full experience of court and saw that I am being monitored, I am being watched, and if my behavior is not deemed healthy by the court system, then I would be ordered to make changes...whatever changes they deemed appropriate to my life.

Finally, in our interviews, we talked with several individuals from pre-plea programs who assumed that they had to plead guilty and “giv[e] up all your rights and things of that nature” in order to participate in programs. This understanding stood in direct contrast to the reports of court staff in the same jurisdictions, meaning that either miscommunications about criteria for program entry can severely abrogate individuals’ due process rights, or that not all cases going through court systems are receiving the same treatment. Both of these possibilities are concerning threats to fair adjudication for sex workers. And of course, any lack of clarity around program entry—by design or by default—contributes to overarching coercive practices, as discussed above.

3.2 Court-mandated programs tend to adjudicate without transparency

“Diversion” programs remove the management of prostitution cases from the context of court proceedings and from findable public records, and therefore lead to adjudications that are less transparent. It is more difficult to understand what is actually happening to a PDP defendant/participant than a criminal defendant/participant.

This problem is exacerbated by the fact that PDPs do not follow state, regional or national guidelines. Although there are some trends, most of these programs are hyperlocal, meaning they occur at a county, city or even neighborhood level. Judges also have considerable discretion since most of the decisions made within PDPs are not subject to appeal and may not be part of the public record. This discretion enables additional variety. PDPs are therefore difficult to monitor. Very little public information is available, and our provisional mapping and research constitutes one of the first and most comprehensive studies.

In our interviews, defendant/participant views on judges and judicial fairness varied widely. Some defendant/participants described their judges as “understanding,” and appreciated their efforts. But one individual saw the compassion and fairness of the judge as a rather arbitrary outcome and expressed more cynicism at the ability of any given court official to treat defendant/participants with dignity.

Like the first judge that I had, he’s probably a trick. That’s probably what he is. And the second judge, she actually gave a f***. I feel like it really depends on the individual. The courts on the whole don’t really care. They just like ‘okay, the government funded for this program, the program coming in here and harassing us to send them girls, so they might as well as do it.’

Although these programs attempt to maintain some appearances of professionalism and objectivity, the reality is that they are driven by personalities, i.e., the people who administer the program. The programs

therefore reflect the specific goals of that person and their belief about who sex workers are (e.g., trafficked individuals, criminals, drug addicts).

These programs are also driven by state and local laws: their severity or liberality as well as their silences. As mentioned above, the laws on the books and the potential sentence a prosecutor can expect affect the length and substance of the programs. Jurisdiction-specific policing practices can also lead to a lack of transparency. In pre-booking programs or in sting-based programs such as Seattle LEAD or Project RAISE respectively, the decision to divert or arrest, or organize a sting or not, may fall within the discretion of police officers with limited accountability. When eligibility decisions lack oversight, it is difficult to know or predict who will be diverted.

Finally, the quality and specific capacity of service providers is difficult to know at a local level, since resources available in any given jurisdiction vary widely, and even within the same jurisdiction, the resources available to different service providers may provide, as we observed at the Queens HTIC. It is therefore extremely difficult to compare services.

3.3 “Diversion” programs can encourage increased policing, police abuse and mistreatment by court staff

The creation of PDPs provides law enforcement, judges and prosecutors an incentive and role to play in filling courts with a target population of people. These net-widening effects are not necessarily the result of bad intentions. Administrators and prosecutors may truly believe they are offering a good alternative. Because they believe PDPs are transformative and life-changing, they believe all sex workers should participate. They therefore want to fill the PDP through arrests (or through social contact referral, in the context of some pre-booking and pre-arrest programs) to help sex workers and demonstrate PDPs’ success to others. This desire leads to increased policing, including through stings, which is likely to affect marginalized communities disproportionately. As Wahab and Panichelli argue, targeting people for arrest to offer services violates a variety of ethical standards and assumes the criminal justice system should regulate those populations.⁹⁶

Despite these concerns, there are a number of examples of net-widening in order to provide social services, as well as some contradictory evidence on changing practices and values. In Chicago (post-booking) and in Seattle (pre-booking), anecdotal and survey evidence suggests that prostitution arrests dropped sharply after establishment of a PDP or general diversion program. In Chicago, however, it seems attributable to the new paradigm: officers knew that they couldn’t get people on the misdemeanor prostitution charge anymore, so they started issuing violations instead, for which people are not directed to the PDP. In Seattle, the arrest changes could be due to the specific location of the initial LEAD program (the Belltown section of Seattle, which is not a regular prostitution stroll). Project ROSE in Phoenix and Project RAISE in Tucson suggest net-widening: informants saw increased policing of sex workers through PDPs serves to further marginalize oppressed groups. Although some PDPs explicitly endorse net-widening, we cannot capture policing net-widening effects that may be unintended or hidden without comparing arrest rates before and after PDPs are offered. We did not measure net-widening effects due to the actions of prosecutors or judges, but increased prosecution seems likely. In general, PDP defendant/participants corroborated a regular practice of police profiling, police abuse, and mistreatment in court systems. One transgender individual described that even when she was out on the streets of her city doing peer outreach:

⁹⁶ Stephanie Wahab and Meg Panichelli, “Ethical and Human Rights Issues in Coercive Interventions with Sex Workers,” *Affilia: J. Women and Social Work* 28.4 (2013): 344-349.

I'm like labeled now I guess in society. Because when they look at my rap sheet, all they see is like 50, 60 prostitution arrests. Now when I am out there and I am not prostituting, when I'm handing out condoms, the officers know me because I used to prostitute, so if they see me and they need a girl, they are gonna take me.

Another defendant/participant described how the cops treated her disrespectfully and subjected her to both sexual and verbal abuse.

I've had a police officer stick his finger in my pussy. I've had them lifting up my dress. I've had them [say] 'oh you're just a bird bitch, you ain't nothing.' 'You're the scum of the earth, why would you sell your body?' umm, they never ask, 'hey, are you being trafficked?' No! They automatically think, 'oh, this bitch really wants to sell her ass.'...they think they know the whole situation so well but yet, they don't.

A third individual noted that the abuse doesn't stop with the police. "Oh, gosh," she said about court staff in her jurisdiction, "they're rude [...] the correctional court officers who work there treat you like you're beneath them. And ethically that is just not what you are supposed to do to people [...]" She went on to describe how she had been physically abused in the courthouse, as police officers handled her roughly and made her handcuffs too tight. Other defendant/participants focused on pervasive condescension and judgment they faced from court officials and police. "I feel like the police are mad disrespectful. Even after they already caught you," said one individual,

I'm in the cell now, why you still making faces and spitting and doing all this funny shit. What's up with you? ...I feel like that process is a bitch. You just feel ostracized the whole time. You feel like, 'yeah, I'm a hooker. I'm a hooker.' That's how you feel. Everybody just throwing it in your face.

Even judges were not exempt from the kind of abusive, insensitive, and stigmatizing conduct that former defendant/participants identified across the board. For instance, one individual remembered how her judge often commented on the clothes that defendant/participants wore to court: "the judge tells us, you know, that is too tight or maybe you could dress in something looser next time and she will compare it to us being out on the streets [...] it makes you feel cheap, it makes you feel bad."

4. Many PDPs reviewed are not implemented with **transparency, sustainability, and accountability** to individuals most affected by their policies and practices, and engagement with local communities is not common.

Transparency, accountability, and sustainability are essential to any PDP that aims to effectively serve defendant/participants' resource and social service needs. However, these elements are not guaranteed when a system cannot provide programmatic clarity for staff and defendant/participants during program and court processes as well as service provision; when it fails to seek input from people most affected by the criminalization of sex work at every step of PDP development; and when it cannot secure the resources to ensure long-term stability for defendant/participants.

Notably, the miscarriage of basic principles of due process in misdemeanor justice have been demonstrated in current scholarship⁹⁷: in this context, with the added factors of gender difference (with arrests for prostitution dominated by women, including transwomen) and sexuality (sexual conduct outside of marriage and for money policed as “vice” in most regimes) the PDPs again operate not as correctives to the system, but exacerbators of possible unfairness.

4.1 Lacking transparency in both court processes and service provision

Highly varied practices across PDPs compromise transparency in many ways, some of which have already been discussed in earlier sub-sections. For instance, some pre-plea program defendant/participants that we interviewed assumed that they must plead guilty to receive services. As discussed in Section II, staff in different PDPs lacked familiarity with eligibility requirements for their respective PDPs, and the program we identified in Rhode Island had no clear eligibility requirements at all.

This lack of clarity was not exclusive to judicial practice, prosecutorial or defense attorney practices, or court procedure. Even for programs that adopted a harm reduction approach through empowerment, educational, or medical treatment services, for example, few programs had thorough oversight mechanisms to ensure that service provider conduct matched with the objectives and frameworks of the program. As is further explored in the recommendations section, transparency, sustainability, and accountability are essential to maintaining high standards in social service provision, but the criminal justice system should not be the arbiter of social services. Oversight mechanisms to ensure that services are being delivered in a manner that aligns with 3AQ standards should not be the responsibility of the courts or authorities within the criminal justice system, as such an arrangement would unduly expand the powers and reach of the CJS over the social service sector. As noted below, the accountability for quality and acceptability for services rests with the affected populations, and social service providers ought to be governed by the standards of their profession as well.

4.2 Failing to stay accountable to individuals most affected

Although many former PDP defendant/participants that we interviewed articulated critiques and described abuses of the systems that they went through, several people also remarked on positive aspects of their experiences. Commonly touted components included the provision of structure and stability, as well as the ability to start “fresh.” One defendant/participant perceived that the goal of the PDP she went through was “to help you get back on your feet and back to the mainstream of society,” or in other words, “to help you help you.” Another individual said, “I am not going to say I always liked someone to tell me what to do. I’m not going to tell you I liked that all the time. But it was good for me.”

Several defendant/participants remarked on the constancy of their service providers: one person described her case manager as, “the one constant thing in [her] life...She never got an attitude. She never got mad that I didn’t come back. She was there. She was just as happy to see me a year later, knowing that I was still doing the same thing. And she hooked it up.” A few others dwelled on trusting interpersonal connections they developed with police or a specific judge: an individual described her judge as “understanding,” someone who tried to understand rather than “just live in a bubble and be a judge.” A few defendant/participants described significant life changes that resulted from their continued access to services after their mandates had finished: “Before I was in the program I didn’t care if I died or

⁹⁷ Kohler-Hausmann, “Managerial Justice and Mass Misdemeanors”; Kohler-Hausmann, “Misdemeanor Justice: Control Without Conviction”; Swavola et al., *Overlooked: Women and Jails in an Era of Reform*.

not, you know,” one person said, “I was pretty much hopeless. But now I have someone working close with me. Taking baby steps. It’s a lot better.”

Having service providers—and even on occasion law enforcement agents and legal professionals themselves— “working close” with individuals is, of course, an intended outcome of most PDPs. Yet the fact that some individuals have benefited from specific programs neither ensures that programs are set up at a systems-level to respond effectively to all the defendant/participants: while worthy of celebration, positive individual experiences do not always translate to a valuation of dignity or negate the possibility for abuse or mistreatment on the systems-level. Indeed, the intensity of the examples that reflect working relationships is rather a commentary on the overall failure of the court systems otherwise to provide these kinds of respectful engagements. And the lack of clarity on sustainability and “what works” may sadly hint at the inability of the various PDPs to support ongoing efforts to improved experiences.

Moreover, as noted in our Methodology section, we also consider the possibility that we may be seeing a selection bias for a positive experience, as many of our interviews were facilitated by service providers in the PDPs.

A lack of accountability to program defendant/participants remains one of the most significant barriers to creating diversion programs that respect the human rights and dignity of sex workers; respond to their actual needs through available, accessible, acceptable, and quality services; and abide by fundamental principles of law and justice.

With the exception of SNaPCo’s engagement with the Pre-Arrest Diversion initiative in Atlanta/Fulton County, most of the PDPs we observed failed to involve people affected by the criminalization of sex work in the design, implementation, and/or evaluation of their programming. As reported in Table 2 of Appendix II, over one-third of identified PDPs did not integrate former sex workers or peers into their diversion programs at all. Feedback was rarely solicited from individuals who had completed mandated services, with Sacramento as the one of the only exceptions. And court staff and service providers regularly determined measures of “success” in the program without clear rationale and without taking into account the perspectives of sex workers.

How might the input of sex workers influence the direction of PDPs? Measures of “success” in diversion programming may not be uniform across the country. However, from both our own in-depth interviews and wider reviews of relevant literature, there are many possible policy changes that would be informed by a sex worker perspective. For instance, as noted in sub-section 1, one of the most often-repeated emphases of almost all the defendant/participants interviewed was on the need for diversion programming to be truly voluntary, meaning that individuals must freely consent to enter and participate if social services are to have a significant impact. Thus, although there may be no uniform measure of success from one PDP to another, being responsive to the needs of local sex worker networks and groups is the only way to ensure that PDPs are designed to meet the needs and desires of those most deeply affected by the criminalization of sex work.

4.3 Threats to sustainability of programming

Although not many of the programs we reviewed indicated that funding issues would pose a threat to their sustainability, the longevity of services comes under slightly greater threat in cases where community service providers are expected to self-fund for their participation in the court-mandated programs. Furthermore, *charging individuals for participation in PDPs* (e.g., in Illinois or Texas) reduces the accessibility of health and social services, meaning that securing funding in the short-term is built on

models that are disconnected from state accountability and come at a cost to defendant/participants and service providers, as the consequences of inability to pay glaringly exposes inequities among defendants.

Examining this sustainability questions highlights an embedded tension in many PDPs between the court system and community-based services. Municipal courts may have specific mandates, but unless there is commensurate investment in community resources, the purported benefits of court-mandated programming can be temporary at best, and possibly mal-“diversionary” (i.e., sending people and resources in the wrong directions) — or at minimum excluded from larger community asset-building as a whole. We suggest that funding models be reviewed in light of supports for marginalized communities more generally, with attention to the way social welfare is not best distributed as “penal welfare”.⁹⁸

⁹⁸ Gruber et al., “Penal Welfare and the New Human Trafficking Intervention Courts.”

IV. Conclusions and Recommendations

Sections II and III of this policy paper have mapped and analyzed the diverse structures, practices, and frameworks that make up municipal PDPs across the United States. In Section II, we worked sequentially through varied court processes, from program development and entry to participation and program exit, to document how PDPs work on the most logistical level, and we considered the roles that cultural and social sensitivity to difference and non-conformity play in all of these components. The multiple and intersecting harms caused by legal involvement in the provision of social and health services that we described in depth in Section III suggest some of the fundamental problems that arise when basic human needs such as healthcare, housing, and welfare are offered in a penal context.

For this reason, throughout the paper, we have also aimed to situate the complex terrain of PDPs within broader movements to reform and transform the criminal justice system. We have observed that diversion programs may sometimes (and unfortunately) provide the only source of consistent social services and resources for sex workers in a number of jurisdictions we visited. However, we observed that the coercion and abuse arising without attention and accountability in hyper-localized court systems profoundly compromise the ability of law enforcement, court staff, and service providers to guarantee ethical and appropriate treatment of sex workers.

This report highlights a key tension in making recommendations given our own analysis: how can we address pragmatic concerns to respond to a current reality (i.e., acknowledging the growing of prevalence of PDPs across the country and the immediate need for resources for sex workers) while maintaining deep skepticism of the criminal justice system's criminalization of prostitution and raising concerns about its involvement in resource/service provision altogether?

Many activists, scholars, politicians, practitioners, and foundations alike agree that specialized or "problem-solving" courts, including most versions of PDPs, are often not necessarily the most appropriate or effective alternatives to current failures in the U.S. criminal justice system. Advocates at the New York Red Umbrella Project describe how the path through the criminal justice system "may serve as an intervention for some defendants, but it does not lead to greater economic and personal empowerment for sex workers on the whole."⁹⁹

Our interviews and analysis of the PDPs made evident the ways in which any level of contact with the CJS carries potential for harm to people selling sex, including heightened vulnerability to institutional violence (such as at the hands of police, court officials, etc.). Similarly, lawyers and legal scholars Aya Gruber, Amy Cohen, and Kate Mogulescu argue that "few could disagree with the notion that from the perspective of defendants, a dismissal is better than a conviction, and liberty is better than jail." But, they go on to assert, the de-carceral potential of PDPs is limited, especially because "a criminal court mandating services means continuing court involvement and monitoring," as courts secure mandates with the continual threat of incarceration and punishment.¹⁰⁰ In 2015, Open Society Foundations argued that drug courts, upon which many PDPs are modeled, "do not represent reform if they undermine health and human rights."¹⁰¹

⁹⁹ Ray and Caterine, *Criminal, Victim, or Worker?*, 24-25.

¹⁰⁰ Gruber et al., "Penal Welfare and the New Human Trafficking Intervention Courts," 50-51.

¹⁰¹ Open Society Foundations, "Drug Courts: Equivocal Evidence on a Popular Intervention," 17.

Based on our observations, interviews, and analysis, we echo these colleagues and peers in articulating for two transformative goals:

- **Decriminalization of prostitution.** Although some PDPs may provide some steps that are a less harmful alternative to incarceration, we must double down on ongoing efforts to remove from the criminal justice context altogether the criminalization of persons buying and selling sex, and any associated practices.¹⁰²
- **Funding for and provision of services and resources, so that they are readily and consistently available in communities.** Rather than relying on the negative incentives associated with criminalization, local government should fund and provide referrals to the programming that sex workers want, removing courts as gatekeepers of services and much needed resources.

However, there are also incremental steps that can be taken by those involved in various stages of the design and implementation of PDPs in order to better align their programs with their rehabilitative and/or empowerment mission. These recommendations are meant to mitigate the harms of the criminal justice system on defendant/participants and to maximize programs' responsiveness to the needs and rights of sex workers. They are intended as specific, actionable guidance for PDPs as they are currently constituted, and do not necessarily reflect the Global Health Justice Partnership's vision as to the best policy response to prostitution generally.

To the maximum extent possible, reforms of “diversion” programs directed towards persons arrested under prostitution offenses should strive to re-structure them so as to minimize the scope of criminal justice system involvement, particularly with regards to the management of service provision.

¹⁰² Here, we focus on persons over the age of 18, as we are aware that under federal law, facilitating the buying sex from a person under 18 is captured under the crime of trafficking. At the same time, we note that so-called "Safe Harbor" laws to protect from prosecution and get services for persons under 18 caught selling sex have failed to live up to their promises.

Figure 4. Targeted Recommendations, Organized by Relevant Stakeholder

<p>Law Enforcement, Judges, Court Staff and Policymakers</p>	<p>1.1 Review and revise the structure, goals, and operation of all PDPs such that the scope and role of the criminal justice system is minimized to reduce immediate harms to defendant/participants.</p> <p>1.2 If supported and led by affected communities, consider shifting from post-booking or post-adjudication interventions to pre-booking and pre-arrest interventions in order to reduce the abuses and traumas inherent in CJS involvement.</p> <p>1.3 Reduce the surveillance, profiling of, and violence against sex workers by police officers.</p> <p>1.4 Guarantee fair and clear adjudication for sex workers whenever they come into contact with law enforcement agents or the court system.</p> <p>1.5 Remove the threat of incarceration as either a penalty for declining participation in PDPs or as a sanction for non-compliance within PDPs.</p>
<p>PDPs and Service Providers</p>	<p>2.1 Ensure that all services provided through PDPs are readily available, accessible, acceptable, and quality-assured, and provided through community-based and –respected organizations.</p> <p>2.2 Maximize individualized defendant/participant voluntariness, autonomy, and control over services and treatment.</p> <p>2.3 Conduct all diversion programming with cultural competency.</p>
<p>Funders</p>	<p>3.1 Secure the funding and resources necessary to address the full spectrum of sex workers' needs, including structural/systemic issues.</p> <p>3.2 Embed mechanisms for transparency, accountability, and sustainability throughout diversion programming.</p>

1. Law Enforcement, Judges, Court Staff and Policymakers

1.1. Review and revise the structure, goals, and operations of all PDPs such that the scope and role of the criminal justice system is minimized to reduce immediate harms to defendant/participants.

Criminal justice system involvement, no matter how well-intentioned by the PDPs themselves, is often damaging to the health, rights, and lives of defendant/participants. As such, recognizing that the best interests of sex workers are not served under CJS control and surveillance, PDPs can better align their rhetorical aims with their actual practices by promoting voluntariness, divesting from the logics of “penal welfare”, and prioritizing expeditious movement of defendant/participants out of the purview of the CJS.

Intensive and mandated (and by nature, coercive) program requirements can create barriers to successful program completion as well as undermine the uptake of social services due to defendant/participant lack of interest or willingness to engage. Moreover, failure or noncompliance often results in one of several forms of punishment, thereby further entrenching defendant/participants in the CJS. To make the PDPs

more effective in their therapeutic and rehabilitative aims, harm reduction frameworks can be utilized to reduce the often punitive and demanding nature of PDPs and shift the role of the CJS away from being a manager of and gatekeeper to social services.

Recommendation 1.1 Guidelines

- PDPs should foster conditions that maximize self-determination and voluntary social service engagement by lightening and shortening program requirements such that defendant/participants can exit the program successfully and in an expeditious manner. Limiting time in the PDP could help alleviate some of the harmful and destabilizing aspects of CJS involvement.
- PDPs should seek to disentangle the CJS from the social service sectors by minimizing the regulation or control of defendant/participant contact with service providers. The role of the PDP should be to make the initial connection between defendant/participants and appropriate service providers, after which the PDP should respect the independence and confidentiality of provider-client relationships.
- Following program completion, defendant/participants should be able to continue relationships with service providers on their own accord, if and when they are willing and able to do so.

1.2 If supported and led by affected communities, consider shifting from post-booking or post-adjudication interventions to pre-arrest and pre-booking interventions in order to reduce the abuses and traumas inherent in CJS involvement.

Post-booking programs that offer so-called diversion *after* an arrest is made and/or charges are filed are intended to incentivize defendant/participants to accept diversion in order to get the charges dropped or expunged or to avoid incarceration. However, as many key informants noted, the prospect of getting the charge dropped is often an ineffective incentive, especially when defendant/participants already have pre-established criminal records. Ultimately, post-booking programs may *increase* levels of criminalization overall, as non-compliant defendant/participants get picked up on bench warrants or acquire new charges and continue to cycle in-and-out of the system. The same is true of post-adjudication programs, in which defendant/participants choose between an intervention program and a traditional probation or prison sentence. In many post-adjudication models, non-compliance with program mandates constitutes a probation violation, which means that unsuccessful defendant/participants are re-arrested and further criminalized.

Moreover, post-booking programs do not eliminate the trauma of arrest or court involvement. One of our interviewees who participated in a post-booking PDP emphasized, “When I am in handcuffs I don’t have no point of view. I have no voice. I talk to my attorney for five seconds.” Another post-booking defendant/participant echoed this sentiment:

I don’t feel like first should have to go through bookings and all that stuff though. I feel like that’s f***** up. I feel like if you catch them [sex workers], drop them off somewhere, don’t take ‘em to jail. Get them the f*** away from where they at, but don’t take them to jail. It’s a traumatizing experience in itself.

By contrast, pre-arrest and pre-booking approaches, while still potentially abusive and coercive, appear to provide the potential for being the least problematic of the current menu of diversion models where the basic rights of sex workers are concerned. They might better interrupt the cycle of criminalization, but only if they are designed to limit or avoid on-going contact between police and sex workers (absent other crimes, such as crimes directed at sex workers), and may help address how to take criminal charges out of the equation and focus on harm reduction principles.

Providing sex workers with access to resources and services without the threat of criminal prosecution both empowers sex workers to assert some measure of control over what happens to them and increases the likelihood that defendant/participants will engage with the program.¹⁰³ Calling something “pre-arrest” or “pre-booking” does not ensure that the program contains a good mix of harm reduction principles: each program must be evaluated in its local context, in consultation with affected populations.

Recommendation 1.2 Guidelines

- Any pre-arrest or pre-booking program should be designed with strong transparency and accountability mechanisms for all actors, appropriate funding for service providers, and the leadership of community advocates and people impacted by criminalization, including sex workers.
- Access to social services in a pre-arrest or pre-booking context should not be contingent on contact with law enforcement. Jurisdictions can consider social contact referral systems, in which non-police community members can refer eligible individuals to the services in the program. Measures should be put in place to ensure that net-widening does not occur through police officers making referrals in situations without probable cause for arrest.
- As with all PDPs, the services offered via pre-arrest and pre-booking programs should be informed by community-based needs assessments and should be adequately resourced to address the range of needs identified.
- Participation in a pre-arrest or pre-booking program should be voluntary, should entail minimal requirements, and should not carry threats of criminal charges or prosecution.

1.3 Reduce the surveillance, profiling of, and violence against sex workers by police officers.

From a sex workers’ rights standpoint, police involvement in PDP operations poses many intractable problems. In several of the programs we examined, the good faith rehabilitative efforts of the courts and social service providers seemed directly at odds with the problematic policing practices, including discriminatory profiling, used to round up potential diversion defendant/participants. In some cases, there seemed to be little, if any, communication or coordination between the PDP and the local police department, such that the police and the courts appeared to be operating at cross-purposes. For example, in Austin, a public defender complained that many of her clients experienced abuse and harassment at the hands of police during arrest.

¹⁰³ Thomas O’Hare, “Court-Ordered Versus Voluntary Clients: Problem Differences and Readiness for Change,” *Social Work* 41 (1996): 417-22; Hung-En Sung, Steven Belenko, Li Feng, and Carrie Tabachnick, “Predicting treatment noncompliance among criminal justice-mandated clients: A theoretical and empirical explanation,” *Journal of Substance Abuse Treatment* 26 (2004): 13-26.

In other cases, the PDPs and police departments *did* work cooperatively, but they collaborated in ways that seriously undermined sex workers' rights. For example, in Detroit, the PDP judge would coordinate with the police and the local jail about the timing of sting operations so as to ensure that the jail had enough open beds to accommodate the new arrestees. Moreover, an unintended and potentially devastating consequence of diversion programs that warrants careful investigation is the way in which policing compounds the harms of other forms of punitive surveillance, particularly systems of immigration "policing" and Immigrations and Customs Enforcement (ICE) enforcement [see GHJP HTIC report for more on concerns regarding the impact of "diversion" on noncitizen defendant/participants].¹⁰⁴ Sex trade workers who are undocumented or have an immigration status thus become doubly vulnerable as post-arrest diversion programs and entry into the criminal justice system can increase their risk of being targeted with harsh immigration consequences such as detention and deportation.

We are skeptical of the need for any police involvement in identifying candidates for PDPs. In a pre-booking context, studies show peer-led outreach to be a more effective, less punitive method of connecting sex workers with resources and services.¹⁰⁵

Recommendation 1.3 Guidelines

To the extent that police are involved in interacting with diversion-eligible sex workers, which we suggest should be as limited and minimal as possible, we offer the following guidelines:

- Under no circumstances should the policing of prostitution be increased as a direct or indirect result of the establishment of a PDP. There should be ongoing and publicly accessible data collection and monitoring of local police departments by governmental and nongovernmental civilian actors to ensure that this is not happening.
- PDPs should institute committees empowered to review cases within the PDP to ensure that police practices are not undermining the PDP's rehabilitation efforts or defendant/participants engagement with services through abusive or traumatizing policing tactics.
- Police departments should de-emphasize arrests for prostitution and related offenses and focus instead on providing referrals and linkages to services on a pre-arrest or pre-booking basis.
- Police should discontinue prostitution stings and other degrading practices.
- Police should receive extensive training on the dynamics of sex work (and the various means by which people come to it), trauma, addiction, racism, poverty, discriminations as they may figure in the sex sector, and the meaning and expressions of gender identities.
- Police training should incorporate intensive sensitivity and awareness education to avoid discriminatory practices, such as the profiling of transgender or gender non-conforming individuals, or people of specific racial, ethnic, or income groups.
- Police officers should support and not interfere with sex worker outreach efforts in the neighborhoods they patrol.
- The interactions of noncitizen immigration status and local prostitution policing and adjudication policies need particular attention to ensure that noncitizen defendant/participants are not made further vulnerable to immigration consequences as a result of PDP involvement. State and local authorities should investigate and consider issuing guidelines reducing the risk of ICE and other immigration enforcement authorities from targeting and taking punitive action against immigrants, whether undocumented or with status, who are involved in PDPs, or other criminal and civil cases.

1.4 Guarantee fair and clear adjudication for sex workers whenever they come into contact with law enforcement agents or the court system.

PDPs have the potential to undermine the legal rights of defendant/participants in numerous ways. Pleading requirements may compromise an individual's ability to fight a prostitution charge in court down the line if they do not complete the PDP. Inadequate integration of public defenders can also jeopardize defendant/participants' rights by making zealous defense advocacy impossible.

¹⁰⁴ Yale Global Health Justice Partnership, *Un-Meetable Promises*; Emma Whitford and Melissa Grant, "After Deadly Vice Sting, Advocates Say End to Prostitution Arrests is Long Overdue." *In Justice Today*, 30 Nov. 2017, accessed 7 Dec. 2017. <https://injusticetoday.com/after-deadly-massage-parlor-raid-advocates-say-end-to-prostitution-arrests-is-long-overdue-e61f4aae1bca>.

¹⁰⁵ Corey Shdaimah and Shelly A. Wiechelt. "Converging on empathy: perspectives on Baltimore City's specialized prostitution diversion program," *Women & Criminal Justice* 22.2 (2012): 156-173.

PDP defendant/participants should not be required to waive their legal rights as a condition of participation in the program. In practice, this means that post-booking PDPs should not require defendant/participants to enter a guilty plea, or sign statements acknowledging guilt that might be used against them in subsequent legal proceedings should they fail to complete the program.

Furthermore, defendant/participants should be fully informed of the structure, duration, and requirements of the PDP upfront. Protections should be put in place to ensure that defendant/participants' decisions about whether to participate in the program is fully informed and truly voluntary. This may require special attention to defendant/participants with lower literacy levels or foreign language speakers. To the maximum extent possible, program agreements should be structured in ways that respect defendant/participants' rights of autonomy, privacy, and association. Defendant/participants should not be denied their basic rights to communicate with persons outside the program or sacrifice their privacy or mobility as a condition of participation in the PDP.

Recommendation 1.4 Guidelines

To best ensure defendant/participants' due process rights, we recommend the following:

- Programs utilizing a post-booking model should eliminate pleading requirements and preserve defendant/participants' ability to opt out of diversion and fight the charge in court should they choose to do so.
- PDPs should ensure a robust role for public defenders. The fact that PDPs purport to be "non-adversarial" should in no way undermine a public defender's duty as a zealous advocate. There should always be at least one public defender staffed to the PDP, and that public defender should be included in all decision-making related to defendant/participants and encouraged to advocate aggressively on behalf of clients.
- Public defenders should play a role in ensuring that potential PDP defendant/participants are fully informed of the options available to them. PDPs should allow potential defendant/participants to meet privately with a public defender prior to making any decision about whether to enroll so that individuals are fully apprised of their rights, the PDP requirements, and the other options available to them.

1.5 Remove the threat of incarceration as either a penalty for declining participation in PDPs or as a sanction for non-compliance within PDPs.

One of the most troubling aspects of the PDPs we studied is the continued prevalence of incarceration as a sanction, both for defendant/participants who fail to comply with program requirements and for non-defendant/participants who decline the offer of diversion in the first place.

Despite their stated goal of reducing incarceration of sex workers, some PDP personnel complained about their municipality's practice of letting sex workers out on "time served", primarily because this reduction in detention threat reduces the PDP's leverage to encourage participation in diversion. A few PDP personnel identified lack of jail space as a problem for their programs. Programs also reported using jail time not just as a sanction but also as a way to get individuals to "detox" prior to starting in the PDP. This is an inappropriate way to approach detoxification, for which there are legitimate programs that use medically and scientifically informed approaches.¹⁰⁶ At the same time, many key informants that we interviewed acknowledged that incarceration has been shown not to be an effective deterrent for this population.¹⁰⁷

Perhaps more significantly, incarceration undermines sex workers' autonomy by further reducing their ability to find employment outside of the sex trade and disrupting and destabilizing their lives. In our

¹⁰⁶ At least one program ceased operating as a direct result of lack of jail space for perpetrators of victimless crimes. Confidential interview with key informant. 29 March 2016.

¹⁰⁷ Confidential interviews with key informants. 16 March, 2016; 17 March 2016; 12 April 2016.

assessment, we conclude that there is never an adequate reason to incarcerate someone solely on prostitution-related charges, and using incarceration as a sanction for non-compliance is both inhumane and counterproductive.

As for the use of incarceration as a sanction for non-compliance within PDPs, programs should seek to encourage sustained participation through positive incentives and attractive and responsive service offerings, rather than through punitive measures. If sanctions for non-compliance are employed, they should be applied as little as possible (only after numerous attempts to engage the defendant/participant in diversion services) and in a manner that reflects an understanding of the barriers that individuals seeking to exit sex work often face. Data on use of sanctions should be maintained to evaluate and redress its overuse.

Recommendation 1.5 Guidelines

- Every effort should be made to eliminate the incarceration of sex workers. If jurisdictions are incarcerating sex workers on prostitution-related charges, efforts should be made to ensure that the length of their confinement is minimized. This should hold true regardless of whether a sex worker decides to participate in a PDP. It should also hold true if a sex worker has an extensive criminal record.
- If a sex worker turns down diversion and proceeds through the regular criminal process, the judge (or DA) should never increase the sentence as a consequence of that individual having chosen not to participate.
- Under no circumstances should a PDP defendant/participant be left in jail waiting for a bed to open up in in-patient treatment, nor should defendant/participants be left in legal limbo for extended periods due to lack of resources (e.g., a case should not be continued for months at a time because of a PDP's long waiting list). Sex workers should not be punished because a PDP does not have adequate resources to meet their needs.
- Incarceration should not be relied on as the primary sanction for non-compliance with PDP rules and regulations, even as a sanction of last resort.
- If PDP defendant/participants abscond or are non-compliant in appearing for services or court dates, judges should refrain from issuing bench warrants or further punitive actions, and should instead re-schedule court dates for the future, if they are necessary, and allow extended time for completing services and other program requirements.

For instance, court personnel should approach individuals who want to overcome chemical dependency problems with a thorough understanding of the recovery process (e.g., that relapse is to be expected,¹⁰⁸ that trauma symptoms can present additional hurdles,¹⁰⁹ etc.). At the same time, court personnel should understand and accept that not all sex workers will need or desire all of the services the PDP has to offer. Defendant/participants' decisions about whether or not to participate fully or to remain in the program at all should be respected, not punished and criminalized. Termination from the program should be a sanction of last resort and used only when absolutely necessary; in general, anyone who expresses willingness to participate should be allowed to do so. PDPs should never use incarceration, or the threat of incarceration, as a punitive measure.

2. PDPs and Service Providers

2.1 Ensure that all services provided through PDPs are readily available, accessible, acceptable, and quality-assured, and provided through community-based and –respected organizations.

¹⁰⁸ Stephen T. Tiffany, "A Cognitive Model of Drug Urges and Drug-Use Behavior: Role of Automatic and Nonautomatic Processes," *Psychological Review* 97.2 (1990): 147-189.

¹⁰⁹ Lisa M. Najavits, Roger D. Weiss, and Sarah R. Shah, "The Link between Substance Abuse and Posttraumatic Stress Disorder in Women," *American Journal on Addictions* 6 (1997): 273-283.

It is both understandable and advisable that PDPs collaborate with pre-established social service providers in the community when putting together programming and service offerings. The quality, capacity, and appropriateness of the services provided by community organizations must be continuously monitored and evaluated by entities outside of the criminal justice system in order to ensure that social service organizations maintain their independence of the CJS and are not subject to its oversight and regulation.

In our examination of these programs, we discovered that several PDPs collaborate with community organizations that they admit provide a less-than-ideal standard of care for program defendant/participants. As noted above, one PDP in Dallas sends defendant/participants to a transitional housing program that requires residents to serve as unpaid labor in ballparks, which raises questions about the safety of the housing facility and the potential for exposure to other harms and inappropriate treatment. Other PDPs collaborate with community organizations that are problematic for other reasons, such as Christian ministries that blur the line between service provision and proselytization or counseling services that seem not to adhere to standards of professional conduct.

Moreover, some service providers may not receive additional funding to expand their capacity to accommodate an increase in client volume due to PDPs; therefore, the quality of services may be compromised due to resource and workforce constraints. Finally, PDPs cannot employ patently ineffective therapeutic techniques in their service provision divisions, or ignore widely accepted health or social service therapies or treatments, such as pre-exposure prophylaxis or methadone.

Recommendation 2.1 Guidelines

- Before identification of service providers, PDPs should conduct, with meaningful involvement of sex workers and other impacted groups, a thorough community needs assessment that determines the interests and life goals of sex workers impacted by the PDP and the services and structural changes that would be most responsive to needs that they identify.
- PDPs should collaborate with sex worker-led organizations whenever possible, and always with local, community-based organizations to assess and disseminate services.
- PDPs should aim to select service providers addressing the needs of those being diverted through community-based and -respected organizations. PDPs should select service providers carefully in accordance with transparent, publicly reviewable, and standardized processes and should provide the organization with sufficient and sustainable funding and resources to compensate for any additional client volume.
- Service providers should have the ability (including sufficient funding, cultural competencies, staffing, and other resources and infrastructure) both to assess and meet, in a timely manner, the individualized needs identified by defendant/participants, including the fundamental drivers of the economic, social, and structural vulnerabilities faced by many sex workers (e.g., housing and financial assistance).
- Prioritizing the input and perspectives of defendant/participants, providers and their services should be continuously monitored, evaluated, and accordingly revised. This oversight should be conducted by the service organization, its funders as appropriate to the terms of the grant, and regulatory bodies *outside* of the CJS, in accordance with ethics and standards informed by the professional regimes applicable to that sector. Evaluations should include safe and confidential mechanisms for defendant/participants to provide feedback and should prioritize their metrics for success and progress. Any lapse in the quality or appropriateness of services should be addressed promptly.
- All curricula and programming, including those administered by third-party service providers, should be non-proselytizing (secular if proscribed by courts) and non-stigmatizing.
- PDPs and service providers should be familiar with and employ harm reduction techniques, both in substance use treatment and defendant/participant education.¹¹⁰

¹¹⁰ Harm reduction efforts in the context of sex work and substance abuse require comprehensive efforts that combine behavioral, medical, and education approaches. References include: (1) Rekart, "Sex-Work Harm Reduction." (2) W. Van den Brink and C. Haasen, "Evidenced-based treatment of opioid-dependent patients," *Can Journal of Psychiatry* 51.10 (2006):635-46. Review. (3) NIH: National Institute on Drug Abuse, "DrugFacts: Treatment Approaches for Drug Addiction," January 2016. Accessed 17 April 2016.

- Employees in all components of diversion programming should be required to provide the most evidence-based, clinically-verified, and trauma-informed therapeutic techniques and approaches available.

2.2 Maximize individualized defendant/participant voluntariness, autonomy, and control over services and treatment.

Nearly all PDPs are premised on the incorrect assumption that involvement in sex work is in itself a problem, coerced situation, or pathology that requires treatment and “saving”. This “treatment” framework is an inappropriate response to sex work, but PDPs may be in a position to ameliorate other issues, such as drug dependence, trauma, or HIV risk as well as need for treatment.

Among the most impressive PDPs we studied were those that made concerted efforts to involve program defendant/participants directly in developing individualized treatment plans related to these issues. For example, the Phoenix Court in Austin allowed a defendant/participant who did not wish to enroll in traditional intensive outpatient drug treatment to take less traditional and recovery-focused yoga therapy classes instead. While such a compromise may be considered unorthodox, the program staff found that the defendant/participant still benefited therapeutically and became more comfortable with the prospect of pursuing other opportunities within the program. This personalized, participant-driven approach restores some measure of autonomy and control to the defendant/participant in an otherwise coercive system, which has the benefit of increasing their buy-in and the likelihood that they will be successful at achieving their individual goals.

Recommendation 2.2 Guidelines

- To the maximum extent possible, service providers should allow defendant/participants to serve as co-designers in their treatment plan, prioritize needed services, and drive the goal-setting process.
- Service providers should remain open to less traditional treatment options if a defendant/participant expresses enthusiasm for or seems more likely to be successful in them.
- Efforts should be made to accommodate and provide alternatives to defendant/participants who express reluctance, distrust, or fear of a particular program or treatment.
- Service providers should not be pressured to facilitate exit from sex work as the primary goal of service provision, unless so identified by the defendant/participant.
- The services available through the PDP should reflect the diversity of needs and experiences of defendant/participants. No program should be one-size-fits-all.
- PDPs should respect the confidentiality of the provider-client relationship and refrain from using counselors, social workers, and other providers as tools for continued surveillance and should avoid placing providers in situations where they are forced to report punishable behaviors.

2.3 Conduct all diversion programming with cultural competency.

We observed several instances in which the PDPs themselves explicitly marginalized the individuals they purport to serve. Programs should strive to accommodate anyone who wishes to participate, regardless of criminal history, literacy or language barriers, gender identity, multiple diagnoses, or whether they meet “trafficking” criteria.

Recommendation 2.3 Guidelines

- Judges and court staff should be provided education and training that would support their ethical and rights-promoting engagement with people affected by the dynamics and histories of structural oppression, trauma, addiction, discrimination based on gender identity, trafficking, and sex work.
- If the PDP employs counselors directly, those counselors should adhere to regular professional conduct standards

regarding confidentiality. Therapy and counseling should not double as surveillance, and information shared in a therapeutic setting should never be deployed to sanction or punish.

- Similarly, non-clinical court staff should be mindful of confidentiality in their discussions of defendant/participants' progress.
- PDPs should consider employing a "case conference model," i.e., a form of consultation on treatment progress and service adequacy that includes all parties, including the defendant/participant and counsel, in discussions of progress and treatment.
- Programs should think critically about the rhetoric used to describe sex workers. Although the shift toward human trafficking-centric narratives has some upsides – it may make PDPs eligible for certain grants, and it ostensibly removes the "criminal" frame and "bad woman" stereotypes that have traditionally been applied to persons in sex trade work – this narrative can also be reductive and does not reflect the reality that people engage in sex work for many reasons unrelated to the coercion and violence definitional to trafficking. PDP proponents should be cognizant of this when thinking about messaging, as failure to recognize the full spectrum of sex work experiences might compromise the program's ability to meet the needs of all defendant/participants and engage constructively with defendant/participants in the PDP process.

3. Funders

3.1 Secure the funding and resources necessary to address the full spectrum of sex workers' needs, including structural/systemic issues.

This report maintains the importance of funding for prostitution decriminalization efforts and for community-based social service organizations by and for sex worker communities. In the current criminal legal regime, however, we also recognize the importance of providing alternatives to traditional criminal sanctions for prostitution and related offenses. While all PDPs are irrefutably lodged in the punitive structure of the criminal justice system, post-booking and court-based diversion programs represent some of the most deeply embedded options. Funders should consider that pre-arrest and pre-booking diversion programs, though they do not structurally change the legal status of prostitution, may be preferable to post-booking programs in curtailing the harms of CJS involvement, if designed ethically, with input from affected communities, and with an eye towards minimizing contact between police and people selling sex and building accountability [see Recommendation 1.2].

If a jurisdiction decides to implement a PDP, it should, at minimum, ensure that the program and service organizations involved have adequate funding to address any unmet, resource-intensive needs defendant/participants might have. Program personnel at some of the PDPs we studied noted, for example, that a lack of stable, affordable housing is the most common and critical unmet need they encounter. They acknowledge that neither the PDP nor the service providers have the capacity to get all defendant/participants into housing, which they concede undermines the effectiveness of diversion overall. Moreover, they seem unconcerned by the more fundamental disconnect at play - namely, that jurisdictions are choosing to fund PDPs that are unable to connect people with services that meet their housing needs rather than, say, programs that actually provide housing.

Recommendation 3.1 Guidelines

- Funders should first and foremost consider investing in prostitution decriminalization efforts and legislative change, as well as in community-based social service organizations. Should funders be interested in financially supporting the development of a diversion program, they should carefully consider their options and select a model that affected local communities find most acceptable and that minimize involvement in the CJS (i.e., pre-arrest and pre-booking programs over post-booking models).
- Jurisdictions considering diversion must be cognizant of the considerable expenditure required to run a PDP responsibly, and must be committed to funding it at the requisite levels, including funding that for resources such as housing if that is the most pressing need.
- Funding should include support for external evaluations of PDPs to determine whether and to what extent they successfully meet the needs of their defendant/participants. If programs are shown to be ineffective or unresponsive to defendant/participant needs, they should be held accountable.
- Funders should ensure that PDP requirements or goals reflect what the program realistically can provide. If the program mandates achievement of certain goals (such as securing stable housing as a condition of graduation), the program has an obligation to ensure that housing is available and accessible.
- Funders providing grants to PDPs should allow for flexibility in grant conditions and refrain from making the programs jump through arbitrary hoops that may not be in the best interest of program defendant/participants (e.g., requiring case managers to make a pre-determined number of contacts per week). PDP requirements and curricula should be deliberately designed according to tenants of cultural competency and should be individualized and evidence-based, rather than arbitrarily cobbled together based on grant requirements.
- Funders should ensure that PDPs can offer a range of services that address the circumstances that marginalize sex workers such as education, housing, addiction, employment, legal, and expungement support.
- Funders should ensure that PDPs do not under any circumstances charge fees to their defendant/participants.
- Funders should ensure that PDPs collect information on the systemic barriers that defendant/participants face and engage in sustained policy advocacy to address those issues at a structural level, rather than simply targeting individuals. However, any form of data collection should also recognize the importance of confidentiality for defendant/participants directly affected.

3.2 Embed mechanisms for transparency, accountability, and sustainability throughout diversion programming.

One of the most striking aspects of this study was the enormous diversity in models, practices, and standards being employed by PDPs throughout the country. There is no uniform set of best practices, and each jurisdiction seems to be operating from a different playbook with very little accountability or oversight. Some states have promulgated basic standards for specialty courts,¹¹¹ and the Center for Court Innovation has published various toolkits and guidelines.¹¹² The Center for Court Innovation also regularly consults with jurisdictions seeking to implement PDPs.¹¹³ LEAD now also has a National LEAD Support Bureau that is responsible for helping to direct and organize the development and implementation of LEAD in other jurisdictions. But despite all these tool kits and guidance, actual review and analysis of the PDP programming is very thin, and in any event, there is little being done to identify problematic programs and hold them accountable for abridging the rights of sex workers.

¹¹¹ Tex. Health & Safety Code Ann. §§ 169.001-006 (West 2015); Supreme Court of Ohio and the Ohio Judicial System, “Specialized Dockets Certification,” available at <https://www.supremecourt.ohio.gov/JCS/specDockets/certification/default.asp>.

¹¹² Center for Court Innovation. “Identifying and Responding to Sex Trafficking: A Guide for the Courts,” available at https://www.courtinnovation.org/sites/default/files/documents/DV_SJI_Risk%20Need_.pdf; Robyn Mazur, Danielle Malangone, Miriam Goodman, and Katie Crank, *Responding to Sex Trafficking in Your Jurisdiction: A Planning Toolkit* (New York, NY: Center for Court Innovation, 2015), available at https://www.courtinnovation.org/sites/default/files/documents/RespondingtoSexTrafficking.pdf_0.pdf.

¹¹³ The Center for Court Innovation focuses on retooling court systems to identify and address human trafficking and sexual exploitation. CCI does not engage with questions of whether the criminal justice system is an appropriate venue for addressing these issues, nor does their trafficking-centric narrative allow for a nuanced, multi-dimensional understanding of sex work.

Recommendation 3.2 Guidelines

- An institutional actor(s) representing the interests of sex workers should be deputized to monitor, evaluate, and ensure accountability for PDPs. This actor(s) should have the capacity to evaluate programs in rigorous and transparent ways. It should have the independence and objectivity necessary to call out PDPs for problematic practices without repercussions, and the institutional clout necessary to mobilize media and government scrutiny.
- Any institutional actor(s) purporting to represent the interests of sex workers should be closely accountable to sex workers themselves. Ideally, any organization involved in monitoring and evaluating PDPs will directly incorporate current and former sex workers in those processes. This includes funders in any capacity, who should hold grantees accountable.

Appendices

Appendix I: Descriptive overview of PDPs as of 2016

Region	State	Local Jurisdiction (City/County)	Name of Program	Brief Program Description	Launch Date	Defunct, Operational or Unconfirmed
East	CT	Hartford	Hartford Community Court	Community court that includes those charged with prostitution misdemeanors and diverts on a pre-trial basis.	1998	Operational but no specific programming for prostitution charges currently.
East	DE	Wilmington	Human Trafficking Court (previously Trauma Informed Probation, TIP)	Post-adjudication program that accepts a wide range of charges, including prostitution, for treatment as a component of parole or probation.	2012	Operational
East	PA	Pittsburgh	PRIDE Court, (Positive Recovery Intensive Diversion Experience)	Unable to contact.	2004	Unconfirmed
East	PA	Philadelphia	Project Dawn	Unable to contact.	2010	Unconfirmed
East	RI	Providence	Intensive Diversion Program (IDP)	Initially funded through a SAMHSA grant. Pre-plea diversion program for a variety of charges. Uses MRT psychoeducation curriculum for women victims of trauma (with majority having a history of prostitution).	2014 (approx.)	Operational
Midwest	KS	Kansas City	Kansas City DA Diversion Services Unit	Unable to contact.		Unconfirmed
Midwest	MN	Minneapolis	GIFT (Gaining Independence for Women in Transition) Court		2009	Operational
Midwest	MO	Kansas City	Kansas City Municipal Court Diversion Program	Unable to contact.		Unconfirmed
Midwest	NE	Omaha	Wellsprings Program	A Salvation Army-run program that provides services to people seeking to exit prostitution. It is a service provider, not a PDP, but defendant/participants are occasionally mandated to participate as a condition of the police not filing charges or as a condition of probation.	1980s	Operational
North	IL	Aurora	Kane County Deferred Prosecution Program	Post-booking programs that handles first-time prostitution misdemeanors.	2002	Operational
North	IL	Chicago	Chicago Prostitution	Post-booking program that handles all Cook County prostitution offenses.	June 2015	Operational

			and Trafficking Intervention Program			
North	IL	Chicago	WINGS (Women in Need of Gender-Specific Services)	Post-booking program that handled Cook County felony offenses.	Jan 2011	Defunct 2013 Illinois defelonized prostitution
North	IN	Indianapolis				In early planning stages
North	MI	Battle Creek	Prostitution Diversion Battle Creek	Started out as post-booking program but have temporary halted operations while they explore shifting to a LEAD model	Fall 2015	Operational
North	MI	Detroit	Project Fresh Start		2004	Defunct Unknown Wayne County was not allowing them to use jail space
North	OH	Columbus	CATCH (Changing Actions to Change Habits) Docket	Post-booking 2-year probation-style program for misdemeanor offenses	2009	Operational
North	OH	Cincinnati	CHANGE Docket	Post-booking 2-year probation-style program for misdemeanor offenses	Aug 2014	Operational
North	OH	Toledo	Project HOPE (Holistic Opportunities & Preventative Education)	Unable to contact.		Unconfirmed
North	OH	Cleveland	Cleveland Municipal Human Trafficking Court	Post-booking 2-year probation-style program for misdemeanor offenses	Nov 2015	Operational
North	WI	Milwaukee	Sisters Program	Pre-booking program that handles only municipal citations and has been implemented in one of the city's seven police districts	2011	Operational
Northwest	OR	Portland	New Options for Women (NOW)	Post-plea diversion program that targets females with prostitution misdemeanors.	2008 (but unsure)	Operational
Northwest	WA	Seattle	LEAD (Law Enforcement Assisted Diversion)	Pre-booking program developed to divert low-level drug and prostitution offenders into community-based treatment and support services. Use of police to connect individuals to social workers following arrest but prior to booking or via contact referrals.	2011	Operational
South	MD	Baltimore	SPD (Specialized Prostitution Diversion Program)	Unable to contact. Information from https://www.osibaltimore.org/2013/01/prostitution-and-policing/ One-on-one specialized counseling by a dedicated clinical social worker; Pre-trial monitoring including drug testing and supervision; Immediate and ongoing access to substance abuse assessment and referral; Access to a diversion program for persons who have a record (other diversion programs generally require that the person be a first time offender); Referral to other services such as trauma counseling, health services, employment training,	2009	Unconfirmed

				etc.; and A nolle pros rather than a conviction record upon the successful completion of the SPD program.		
South	NC	Fayetteville	Prostitution Diversion Initiative	Unable to contact.	Sept 2013	Unconfirmed
South	VA	Hampton	Breaking Free	Operates through the division of Child and Family Services and supported through a grant from the Bernadine Sisters Foundation. Works with both misdemeanors/felonies on a pre- and post-booking basis. It is not modeled after any specific program. Accepts men and women.	Mar 2014	Operational
South	DC	Washington, DC	Angels Project Power	Post-booking. Program run by former sex worker.	2004	Defunct 2012 Unknown. No longer PDP in Washington, DC.
South	WV	Huntington	LEAD (Law Enforcement Assisted Diversion) & WEAR (Women's Empowerment and Addiction Recovery)	Modeled after the Seattle LEAD program. Grant-funded. Works on both pre- and post- booking basis. Accepts men and women.	Prebooking: Jan 2016 Postbooking : Sept 2015	Operational
Southeast	FL	Sarasota	TYLA (Turn Your Life Around)	Run through Selah Freedom, an NGO. Works on pre-booking or post-booking basis. In-house 9-12-month rehabilitative program. Cisgender women only.	2013	Operational
Southeast	GA	Atlanta	SNaP (Solutions Not Punishment) Coalition - SNaPCO	Modeled after the Seattle LEAD program. Grant-funded. Works on both pre- and post- booking basis. Accepts men and women.	Plans to launch Jan 2017	Operational
Southwest	LA	Shreveport (Caddo Parish)	Exit Strategy	Post-booking 1+ year diversion program	Dec 2015	Operational
Southwest	LA	New Orleans (Orleans Parish)	Crossroads	Contacted but unable to interview. A lot of info online.	2014	Operational
Southwest	TX	Dallas (Dallas County)	PRIDE (Positive Recovery Intensive Divert Experience) Court	Post-booking 1 year program for primarily misdemeanor offenses	2007	Operational
Southwest	TX	Dallas (Dallas County)	STAR (Strengthening Transition and Recovery) Court	Post-adjudication 12-18-month probation-style program for felony offenses	Jul 2008	Operational
Southwest	TX	Fort Worth (Tarrant County)	RISE (Reaching Independence through Self-Empowerment) Program	Post-adjudication probation-style program for primarily felony offenses, up to 5 years	2011	Operational
Southwest	TX	Houston (Harris County)	Survivors Acquiring Freedom and Empowerment (SAFE) Court	Post-booking 1 year program for ages 17-25, misdemeanor offenses	Apr 2015	Operational
Southwest	TX	Austin (Travis)	Phoenix Court	Post-booking program for misdemeanor or first-	Sept 2015	Operational

		County)		time felony offenses		
Southwest	TX	Corpus Christi (Nueces County)	Red Cord Program	Quarterly sting program with post-booking diversion	2013	Operational
Southwest	TX	El Paso (El Paso County)	ESTEEM	Unable to contact.		Unconfirmed
Southwest	TX	San Antonio (Bexar County)	Esperanza Court	Contacted but unable to interview.		Operational
Southwest	TX	Laredo (Webb County)	Prostitution Court Program	Unable to contact current staff.		Unconfirmed
Southwest	TX	McAllen (Hidalgo County)	Hidalgo County Prostitution Prevention Court Program	Contacted but unable to interview.		Operational
West	AZ	Phoenix	Project ROSE/Project Phoenix	Sting-based program of policing practices used to identify prostitution diversion program defendant/participants. Refused interview.	2011	Unconfirmed
West	AZ	Tucson	RAISE (Responsible Alternatives to Incarceration for the Sexually Exploited)	Sting-based program of policing practices used to identify prostitution diversion program defendant/participants.	Mar 2013	Operational
West	CA	Los Angeles	Prostitution Diversion Program (Journey Out/Watts Health)	Post-plea diversion program that is open to all people arrested for prostitution or loitering with the intent to commit prostitution. Refers defendant/participants to one of two programs (Watts Health or Journey Out) based on location convenience. Funded in part by diversion program for johns.	2008	Operational
West	CA	Sacramento	RESET (Reducing Sexually Exploited & Trafficked)	Post-plea diversion program for women (including trans women) older than 21. Requires 25 hours of programming and HIV test to complete the program. Sessions are facilitated by former sex workers.	May 2015	Operational
West	CO	Denver	Empowerment Program	12-month program modeled on drug court. Contacted but unable to interview.	Feb 2005	Operational
West	CO	Aurora		Unable to contact. May be connected to Denver program.	Dec 2012	Operational
West	NV	Las Vegas	WIN (Women in Need) Court	Mentioned in Chicago Coalition for the Homeless Report. Unable to contact.	Oct 2007	Unconfirmed
West	UT	Salt Lake City	Prostitution Diversion Project	Studied by Wahab and now defunct. Potential for program to start again (may be some interest from city and county officials).	2001	Defunct Approx. 2013
*Note: There are reportedly 11 programs in New York, but they were not contacted during the course of our research.						

Appendix II: Summary tables

Summary Table 1: Program Eligibility and Entry (n = 35)

Program Characteristic	N (%)
Gender Eligibility	
Women Only	8 (22.9)
All Genders	26 (74.3)
Women Identified Only	1 (2.9)
Age Eligibility	
Adults Only	27 (77.1)
Adults and Minors	2 (5.7)
Unknown	6 (17.1)
Charge Eligibility	
Misdemeanor	24 (68.6)
Misdemeanor and Felony	7 (20.0)
Felony	2 (5.7)
Citation	2 (5.7)
Charge Types*	
Prostitution ⁺	33 (94.3)
Solicitation	6 (17.1)
Loitering	10 (28.6)
Possession/drug charges	8 (22.9)
Massage/operating a bawdy house	5 (14.3)
Other	3 (8.6)
History of prostitution with other charges	6 (17.1)

*Does not add up to 100% because multiple responses were allowed

⁺ Not all programs had clear guidelines on the specific charges that made participants eligible, which is why not all 35 reported prostitution

Summary Table 2: Program Services (n = 35)

Program Characteristic	n (%)
Needs Assessment:	
Yes	30 (85.7)
No	3 (8.6)
Unknown	2 (5.7)
Who Conducts the Needs Assessments:	
Service provider/Case manager	19 (54.3)
Court Staff/Probation Officers	6 (17.1)
Peers	1 (2.9)
Police Officers	2 (5.7)
Unknown	2 (5.7)
Does the program distinguish between trafficked and non-trafficked individuals?	
Yes	9 (25.7)
<i>If programming differs for trafficking victims, what is different?</i>	
Different Services	5
Those identified are excluded or have their charge dismissal	4
No	22 (62.9)
Unknown	4 (11.4)
Religiously affiliated providers	
Yes	6 (17.1)
Yes, but influence is moderate/unclear	13 (37.1)
No	10 (28.6)
Unknown	6 (17.1)
Integrates former SWs/Peers at all?	
Yes	10 (28.6)
Potentially	5 (14.3)
No	12 (34.2)
Unknown	8 (22.9)

Summary Table 3: Program Exit (n = 35)

Program Characteristic	N (%)
Arrest Record	
Expunged	2 (5.7)
Remains	6 (17.1)
Remains but can be expunged	10 (28.6)
Not Filed	1 (2.9)
Unknown	16 (45.7)
Charge / Citation upon Completion	
Dismissed / dropped	16 (45.7)
Dismissed after a wait	6 (17.1)
Can remain, be dismissed, or lowered	5 (14.3)
Remains	2 (5.7)
NA/Unknown	6 (17.1)