

PILOT DIVERSION PROGRAM FOR HUMAN TRAFFICKING VICTIMS: INITIAL OBSERVATIONS AND RECOMMENDATIONS FOR NEW JERSEY*

I. EXECUTIVE SUMMARY

New Jersey is a major human trafficking hub because of its geographical location. Tourists seeking a good time flock to Atlantic City's casinos and fuel its large entertainment and hospitality industries.¹ Interstate 95 runs throughout the state, connecting New Jersey to two major cities, Philadelphia and New York City. There are also three international airports that are easily accessible to everyone in New Jersey. As such, trafficked individuals can easily be moved through the state, across state lines and across international borders, without detection.

A trafficked individual has no control over his or her body, and has no autonomy. A trafficked person is controlled fully by someone else, who profits from selling the trafficked individual for sex or to perform labor. That is why the international community calls human trafficking modern slavery. As former President Barack Obama stated: "I'm talking about the injustice, the outrage of human trafficking, which must be called by its true name: modern slavery. It is barbaric and it is evil and it has no place in a civilized world."²

* This project would not have been completed without the tireless and dedicated efforts of Clinic students Rachael Newcomb and Emily Rose Tomasko. They went above and beyond what was required of them, during the Covid-19 Pandemic, to research and draft this document.

¹ Human Trafficking Resources, State of New Jersey Department of Education, <https://nj.gov/education/students/safety/health/ht/>.

² Speech to the Clinton Global Initiative, Sept. 25, 2012, <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>.

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A trafficker can sell someone internationally, or to someone who lives across the street. Trafficking victims are often right in front of us; in restaurants, salons, massage parlors and doing domestic work. Chances are good that everyone who reads this paper has come into contact with a human trafficking victim without even knowing it.

Unfortunately, many trafficking victims are funneled into the criminal justice system. They are arrested, primarily on prostitution charges, or charges related to crimes that they are forced to commit by their traffickers (usually drug and weapons-possession related offenses). The New Jersey legislature has recognized that trafficked individuals are coerced to commit crimes and has passed laws that allow trafficking victims to expunge their prior criminal convictions, including prostitution.³ An expanded bill is currently working through the New Jersey legislature, which “[removes limitations] on qualifying convictions” and provides that “all convictions and other dispositions for violations of law committed while a person was a victim of human trafficking . . . may be vacated and expunged.”⁴

Despite these progressive laws, law enforcement still often does not distinguish between a trafficking victim who is forced to commit crimes, and other persons who violate criminal laws. They thus arrest trafficking victims without realizing that they are victims. Diversion programs change this. They divert trafficking victims from the criminal justice system into social services, where they can learn to escape their traffickers and lead productive lives.

This paper is meant to start a discussion about how to develop successful diversion programs that help human trafficking victims, and combat human trafficking in New Jersey. The paper also serves as a roadmap for communities that are thinking of starting

³ 2012 N.J. A.N. 3352 “The Human Trafficking Prevention, Protection, and Treatment Act”

⁴ N.J. Legislative Session 2020-21, A3596.

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pilot diversion programs. It highlights community-based and public-health-oriented programs around the country that have successfully diverted trafficked individuals away from jail and into programs that have helped them: gain independence from their traffickers, gain life skills, heal both physically and psychologically from the trauma of having been trafficked, and obtain social services and treatment.

By examining the elements of diversion programs that have worked, this report identifies key components that should serve as building blocks for any diversion program in New Jersey, or elsewhere. This paper does not in any way propose an actual comprehensive diversion program. Rather, by identifying baseline criteria for successful diversion programs, it invites experts from various fields to collaborate with community groups, law enforcement, and human trafficking survivors to develop diversion programs that would work well within specific communities. Those diversion programs should, at a minimum, contain the following elements:

- **Use a pre-arrest model.** This model is the least harmful to program participants. Criminal records prevent trafficking victims from obtaining employment and housing. Pre-arrest programs follow public health principles, which benefit both trafficking victims and their communities by reducing crime.
- **Use individualized plans for participants.** One size does not fit all in meeting the medical and psychological needs of trafficking victims. Individualized, tailored programs will help trafficking victims gain skills to live independently and productively.
- **Offer a wide range of social services that are community-oriented.** Successful programs developed very context-specific solutions, often in collaboration with community stakeholders. Services should include necessities like housing, food security, job training, substance abuse treatment, and mental health services.
- **Provide training and cross-training for community partners.** Any services provided to trafficking victims should be coordinated. All stakeholders should receive training on how to collaborate. Social service and health care providers should learn to work with survivors groups and law enforcement as a cohesive team. Training for law

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enforcement should be trauma-informed, and teach methods to identify trafficking victims.

- **Have a strong network of community partners working together.** The community should meet the needs of program participants and provide a welcoming and supportive atmosphere for program participants.
- **Adequate funding.** No diversion program will be successful unless the social services that victims are being diverted to, and training for service providers and law enforcement are properly funded.
- **Access to free legal counsel.** This will assist with expunging and vacating criminal records related to human trafficking, challenging discrimination and helping with immigration-related matters, such as obtaining T Visas.⁵

These criteria are proven building blocks for successful diversion programs for human trafficking victims. By using them as the launching point, trafficking survivors, key stakeholders in government, law enforcement, and other social service providers can work together to form model programs that can then be replicated across the state and in other jurisdictions around the country.

⁵ A T Visa is a type of visa that allows certain victims of human trafficking to remain in the United States, usually if they assist law enforcement in investigating and prosecuting cases of human trafficking.

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II. INTRODUCTION

Every year, millions of people are trafficked globally.⁶ Along with drug trafficking, trafficking in persons is one of the world's fastest growing criminal enterprises.⁷ Trafficking in humans is more profitable than trafficking in drugs, as people are a renewable resource. Drugs can only be used once, while trafficked individuals can be exploited every day. Human trafficking is a multi-billion dollar enterprise and the financial incentive to traffic in human beings is clear. The International Labour Organization says that forced labor generates \$150 billion every year: \$99 billion from commercial sex exploitation and \$51 billion from other forced labor.⁸

The United States and all other countries unequivocally equate human trafficking (both labor and sex trafficking) with slavery. The U.S. defines labor trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage or slavery.”⁹ Sex trafficking is defined as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not

⁶ While it is clear that millions of people have been illegally trafficked globally, the exact number of human trafficking cases is difficult to accurately estimate due to a lack of or incorrect reporting by national governments to international organizations like the United Nations. *See* Global Estimates of Modern Slavery: Forced Labour and Forced Marriage, International Labour Office and Walk Free Foundation, 2017, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf.

⁷ Human Trafficking Fact Sheet, United States Department of Health and Human Services, 2004, <https://www.hsdh.org/?view&did=23329>; Help Human Trafficking Victims, White House Legal Aid Interagency Roundtable, Feb. 2016, <https://www.justice.gov/lair/file/829306/download>.

⁸ Profits and Poverty: The Economics of Forced Labour, International Labour Organization, 20 May 2014, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf.

⁹ 22 USC § 7102.

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attained 18 years of age.”¹⁰ Labor trafficking typically takes place in domestic settings, small businesses, large farms and factories.¹¹ Sex trafficking occurs in residential brothels, escort services, fake massage businesses, strip clubs, and street prostitution.¹² Both forms of trafficking are pervasive and manifest in every community across the globe.

For decades, world leaders have grappled with trying to eradicate human trafficking. This led to The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (“Palermo Protocol”), a legally binding international instrument,¹³ which went into force in 2003.¹⁴ The Palermo Protocol supplements the United Nations Convention against Transnational Organized Crime and, “[declares] that effective action to prevent and combat trafficking in persons . . . requires a comprehensive international approach . . . that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.”¹⁵

The Palermo Protocol and other treaties are geared towards stopping human trafficking of persons across national borders. But, trafficking also occurs at the domestic level, in every country, with victims and traffickers crossing no international borders. The United States’ Trafficking Victims Protection Act of 2000 (“TVPA”) codifies many of the Palermo Protocol’s mandates into domestic law and “provides the tools to combat trafficking in

¹⁰ 22 USC § 7102.

¹¹ Human Trafficking, National Human Trafficking Hotline, <https://humantraffickinghotline.org/type-trafficking/human-trafficking>.

¹² How to Identify a Trafficking Victim, New York State Department of Health, https://www.health.ny.gov/prevention/human_trafficking/identification.htm.

¹³ United Nations Convention against Transnational Organized Crime and the Protocols Thereto, Background Information, United Nations Office on Drugs and Crime, <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.

¹⁴ Convention Against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, done Nov. 15, 2000, T.I.A.S. 13127.

¹⁵ *Id.*

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persons both worldwide and domestically.”¹⁶ The statute has been reauthorized as recently as 2019, and has been supplemented by other anti-trafficking legislation, such as the Abolish Human Trafficking Act of 2017 and the Victims of Trafficking and Violence Protection Act of 2000.¹⁷

Despite these legislative efforts to combat human trafficking in the United States, trafficking persists and thousands of people are victimized annually. Over 23,000 individual victims of human trafficking were identified in the United States in 2018 by the National Human Trafficking Hotline; the number of unidentified victims can only be loosely estimated.¹⁸ The number of trafficking victims cannot properly be estimated, in part, because of underreporting.

Human trafficking goes underreported each year “due to its covert nature, misconceptions about its definition, and a lack of awareness about its indicators.”¹⁹ Communities must be educated on what trafficking is, how it manifests, how to spot it and how to report it. Underreporting of trafficking in persons prevents governments and anti-trafficking organizations from being able to comprehensively understand this human rights crime and allocate resources accordingly.²⁰ Traffickers use “fraud, force and coercion” to make sure that victims cannot or will not report trafficking to the authorities.²¹ The accuracy

¹⁶ United States Department of State, Office to Monitor and Combat Trafficking in Persons, International and Domestic Law, <https://www.state.gov/international-and-domestic-law/>.

¹⁷ *Id.*

¹⁸ 2018 U.S. National Human Trafficking Hotline Statistics, Polaris, <https://polarisproject.org/2018-us-national-human-trafficking-hotline-statistics/>.

¹⁹ Human Trafficking, National Human Trafficking Hotline, <https://humantraffickinghotline.org/type-trafficking/human-trafficking>.

²⁰ Underreporting in human trafficking is a complex issue which needs more in-depth analysis and discussion. The topic is very briefly covered here and will be discussed in greater detail in later drafts.

²¹ *Does Trafficking Exist in Your Community?*, National Human Trafficking Resource Center (NHTRC), https://humantraffickinghotline.org/sites/default/files/Human%20Trafficking%20in%20Your%20Community_0.pdf.

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of trafficking reporting is also negatively impacted when prosecutors charge trafficking offenses as lesser crimes that are easier to prosecute.²²

III. ERADICATING HUMAN TRAFFICKING IN NEW JERSEY

Federal agencies, notably the FBI, Homeland Security and the U.S. Attorney’s Office, play an important role in combatting human trafficking in New Jersey. In addition to these federal measures, New Jersey has taken action to combat human trafficking on the state level through statewide, regional and county programs. The two statewide agencies with the greatest focus on human trafficking are the New Jersey Commission on Human Trafficking²³ and the Attorney General’s New Jersey Human Trafficking Task Force.

The New Jersey Commission on Human Trafficking was created legislatively and is mandated to:²⁴

- Evaluate the existing law concerning human trafficking and the enforcement thereof, and to make recommendations for legislation, if appropriate;
- Review existing victim assistance programs and analyze the costs, organization, and availability of these services for victims of human trafficking and to make recommendations for legislation, if appropriate;
- Promote a coordinated response by public and private resources for victims of human trafficking; and
- Develop mechanisms to promote public awareness of human trafficking . . .”²⁵

The Attorney General’s New Jersey Human Trafficking Task Force, convened by the New Jersey Division on Criminal Justice, works on human trafficking awareness, education and

²² *Id.*

²³ 2014 Annual Report, New Jersey Commission on Human Trafficking, available at https://www.njleg.state.nj.us/OPI/Reports_to_the_Legislature/human_trafficking_commission_2014.pdf.

²⁴ N.J.S.A. 52:17B-237.

²⁵ *Id.*

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training. The Task Force “[is] committed to combating the crime of human trafficking through education, collaboration and prosecution.”²⁶ The Task Force hosts an annual Human Trafficking Awareness Event. Most recently, the January 2020 event was focused on “Child Abuse and Missed Opportunities – Precursor to Human Trafficking.”²⁷

There are also multiple NGOs and nonprofits operating in New Jersey that assist trafficking victims, and work with governmental organizations and survivors to combat trafficking, including: the New Jersey Coalition Against Human Trafficking; Avanzar’s Dream Free Program; the Sanar Institute; Catholic Charities, Diocese of Trenton; Covenant House; and SERV Human Trafficking Services.

Regardless of the obvious strong will in New Jersey to stop trafficking, trafficking is endemic throughout the State. The National Human Trafficking Hotline has identified nearly 4,000 victims of human trafficking in New Jersey since 2007.²⁸ One victim of trafficking is too many – over 4,000 reported, with more unidentified victims, is unacceptable. Underreporting of trafficking is widespread, so it is impossible to know the full extent of trafficking in New Jersey.

A. NEW JERSEY SHOULD ADOPT A PUBLIC HEALTH APPROACH TO COMBATTING HUMAN TRAFFICKING

Scholars and advocates are developing new paradigms to combat human trafficking that are more public health focused.²⁹ The United States and most state and local jurisdictions in

²⁶ New Jersey Human Trafficking Task Force, available at <https://www.nj.gov/oag/dcj/humantrafficking/>.

²⁷ Human Trafficking Awareness Event, available at <https://www.nj.gov/oag/dcj/humantrafficking/event/JOIN-US-HT-Day-STD-2020-0124.pdf>.

²⁸ The National Human Trafficking Hotline categorizes victims as “Moderate” or “High” – 2,190 moderate victims and 1,722 high victims have been identified in New Jersey by the hotline since 2007. “High” level victims display many factors indicating human trafficking, while “moderate” victims contain several factors of human trafficking but lack details of force, fraud or coercion. See New Jersey, National Human Trafficking Hotline, <https://humantraffickinghotline.org/state/new-jersey>.

²⁹ *Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking*, Jonathan Todres, Jan. 2011, 89 N.C.L. Rev. 447.

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our country typically have a three-pronged response to human trafficking: punishment for traffickers and other perpetrators, assistance for victims, and preventative measures.³⁰ Successful diversion programs have found that “primary prevention” is key to curbing human trafficking. This means that anti-trafficking programs should have as their primary stated goal stopping human trafficking. To date, programs aimed at reducing trafficking have had law enforcement as their nucleus. Even partnerships between law enforcement and other community members have been law enforcement focused. In primary prevention programs, even though law enforcement continues to play a key role in combatting human trafficking, helping victims and preventing trafficking, rather than making arrests, is the main focus.

1. EXPANDING TRAFFICKING PREVENTION PROGRAMS IN NEW JERSEY

Public health-informed programs focus on victims’ needs and seek to prevent revictimization. They are not intended to replace or sideline the criminal justice system. Public health models focus on prevention through prosecution of traffickers and their enablers.³¹ Criminal law is still an essential tool in public-health oriented anti-trafficking programs, but the primary goal is to move away from punishing trafficking victims who may be violating the law.³² Addressing human trafficking requires law enforcement, social services and community education to work together. Public health tools become the primary tools for stopping and preventing trafficking in particular communities. Public health ultimately means that governments (at all levels) can reach potential victims before they are

³⁰ *Id.*

³¹ William S. Duffey, Jr., Public Health and Law Enforcement: Intersecting Interests, Collegiality and Cooperation, 32 J.L. Med. & Ethics (Special Supp. to no. 4) 19-20 (2004).

³² Richard Coker & Robyn Martin, Introduction: The Importance of Law for Public Health Policy and Practice, 120 Pub. Health (Supp. 1) 2, 3 (2006).

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trafficked, and when victims slip through the cracks, criminal law steps in to punish traffickers and their enablers, not trafficked individuals

2. ADOPTING THE “MOVING UPSTREAM” APPROACH

Public health models are based on the idea of “moving upstream.”³³ In conjunction with working with victims after they have already been harmed, a public health approach also focuses its attention on “moving upstream” to identify the actual causes of a particular harm.³⁴ When the root causes of a harm are identified, analyzed and addresses, it is far less likely that the harm will occur. Applying a public health model to combat trafficking in persons would allow governments to address the root causes of trafficking, in order to prevent people in New Jersey from becoming victims.

Knowing why there is a demand for trafficked persons and why certain groups are more vulnerable to being trafficked helps inform public health models and ultimately decrease instances of trafficking. For example, to combat sex trafficking, it is vital to address and reduce societal demand for commercial sex, as well as individual demand from single sex purchasers.³⁵ Factors like the oversexualization of girls and women in the media likely play a role in the demand for commercial sex, and need to be addressed in conjunction with targeting individual demand for buying sex.³⁶

Additionally, online recruiters who target minors and young adults with false promises of love, acceptance and adventure as part of calculated sex trafficking grooming plots, have to be monitored and stopped. If the root causes of trafficking are not identified and addressed,

³³ Larry Cohen & Sana Chehimi, Beyond Brochures: The Imperative for Primary Prevention, in *Prevention Is Primary: Strategies for Community Well-Being* 3, 4-5 (Larry Cohen et al. eds., 2007).

³⁴ *Id.*

³⁵ Secretary-General Calls for "Bold Action" to End Human Trafficking, UN News Centre (May 13, 2009), <http://un.org/apps/news/story.asp?NewsID=30783&Cr>.

³⁶ Am. Psychological Ass'n, Report of the APA Task Force on the Sexualization of Girls 34-35 (2007).

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there is no effective way to eradicate the continued transport and enslavement of human beings for sex. Ineffective anti-trafficking measures currently in use will continue to place a band-aid over a systemic problem with complex, intersecting causes.

3. COMMUNITY ENGAGEMENT IS CRITICAL

Public health models are only as strong as the community partners who participate in diversion programs. Current anti-trafficking measures mainly rest on law enforcement, social services organizations and immigration and customs officials.³⁷ Health care professionals should play an important role, as they are in the unique position to identify trafficking victims and help them leave their traffickers.³⁸ Anti-trafficking programs under a public health umbrella not only require the participation of community players, but also coordination between those players. Government agencies, other social service providers, survivor groups, mental health experts, law enforcement, and the public must all be active partners with open lines of communication.³⁹ Coordination is key to any successful anti-trafficking, but is difficult to achieve.⁴⁰

IV. DIVERSION PROGRAMS FOR TRAFFICKING VICTIMS IN THE UNITED STATES

Diversion programs divert trafficking victims from jail. Trafficking victims are diverted to social services so that they have viable alternatives to returning to their traffickers. Pre-arrest diversion programs divert people away from courts and jails *before* they are formally arrested. Individuals are instead diverted towards services such as drug treatment and mental

³⁷ Attorney General's Annual Report, *supra* note 12, at 4-8.

³⁸ Elizabeth Miller et al., Migration, Sexual Exploitation, and Women's Health: A Case Report from a Community Health Center, 13 *Violence Against Women* 486, 486 (2007).

³⁹ World Health Org., *Cities and Public Health Crises: Report of the International Consultation*, 29-30 October 2008, Lyon, France 12 (2009).

⁴⁰ U.N. Secretary-General, *Improving the Coordination of Efforts Against Trafficking in Persons: Background Paper*, at 12 (2009).

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health care. Pre-arrest diversion programs are viewed by experts and advocates as the preferred model.⁴¹ Post-arrest programs have the same goals as pre-arrest programs, to divert individuals away from jail. The diversion, however, takes place *after* the individual has already been arrested. In these models, law enforcement will often drop potential criminal charges after an individual has completed the diversion program. Alternatively, courts may agree to expunge a conviction from an individual’s criminal record if they complete a program.

The anti-trafficking diversion programs that have been evaluated, and that will be discussed below, focus exclusively on sex trafficking victims. The focus of diversion programs on sex trafficking has been rightly criticized. Perhaps fewer labor trafficked individuals are arrested because they are more invisible. Manual labor, unlike prostitution, is not illegal. Thus, it is harder to detect it. If New Jersey adopts a diversion pilot program for trafficked individuals, it should ensure that it conducts outreach and provides services for victims of all forms of human trafficking.

A. EXAMPLES OF SUCCESSFUL PRE-ARREST DIVERSION PROGRAMS FOR TRAFFICKING VICTIMS

Pre-arrest diversion programs allow an individual to avoid physical arrest, the issuance of criminal citations, and physical detention. There are clear benefits to this type approach, the most important of which is that the victim avoids an arrest record. Having an arrest record negatively impacts a person’s ability to find employment and housing. Pre-arrest diversion also allows an individual to access mental health, medical, and social services outside of the criminal justice system. There are many models for pre-arrest diversion programs in the

⁴¹ “Survey of United States Diversion Programs: Sex Work and Sex Trafficking,” Amara Legal Center, Nov. 2018, <https://www.amaralegal.org/wp-content/uploads/2018/11/survey-of-united-states-diversion-programs.pdf>.

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United States that New Jersey should consider in formulating trafficking diversion pilot programs.

1. PROJECT 180

a. About the Program

Project 180 is a pre-arrest diversion program located in Harris County, Texas, under the purview of the Office of the District Attorney. Harris County has multiple specialized diversion programs, including a Misdemeanor Marijuana Diversion Program, a Mental Health Diversion Program, and a DWI Pretrial Intervention Program. Project 180 began in the fall of 2017 as an 18-month pilot program which was funded by a grant from the Texas Governor’s Office and was subsequently renewed.⁴² Law enforcement works with Project 180 as “police officers exercise discretionary authority at point of contact to divert individuals to a community-based, harm-reduction intervention for law violations.”⁴³

The purpose of the program is to, “redefine our approach to human trafficking utilizing a multi-disciplinary team to identify victims while aggressively prosecuting the exploiters.”⁴⁴

Project 180 has four primary stated goals:

- i.** “Reduce the harm of a criminal conviction for young offenders, aged 17 to 24,⁴⁵ charged with prostitution-selling who likely entered into this life as adolescents and trafficking victims;
- ii.** Bridge this same population with a community agency (Houston Area Women’s Center) for services with an eye toward leaving the life;
- iii.** Increase the accountability of exploiters (sex buyers and traffickers) through increased prosecution and sentencing; and

⁴² “Programs & Diversions,” Office of District Attorney, Harris County, Texas, <https://app.dao.hctx.net/about-hcdao/programs-diversion>.

⁴³ “What is LEAD?” LEAD National Support Bureau, <https://www.leadbureau.org/about-lead>.

⁴⁴ *Id.*

⁴⁵ While the program was initially intended to only serve individuals in the 17 to 24 age group, it was expanded at some point during the first fifteen months to include sex sellers aged 25 who had not been arrested for prostitution previously.

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- iv. Gather data and research to inform future policy regarding this population.”⁴⁶

Project 180 provides participants access to an array of services, including counseling, job training, parenting support, healthcare services, housing assistance, language classes, resume building, violence prevention and more. Many of the services that are available to participants during the program are also available to participants after they complete the program, on an optional basis. Of the participants who completed the program and the exit survey, 81% indicated that they would continue to use at least one type of social service in the future.

b. Published Assessment of the Program

An assessment was performed after the first fifteen months of the pilot phase of the program (from late 2017 to mid-2019) by Rebecca Pfeffer, Ph.D. of the University of Houston.⁴⁷ The assessment compared Project 180 participants to non-participants who were arrested during the first fifteen months of the program. As Project 180 is a relatively new diversion program, this assessment is the only formal, third-party analysis of the program that would appear to be available at this time.

During the examined time period, 348 individuals participated in the program; 1,827 other arrests for prostitution in the jurisdiction took place during that time, but did not result in the arrestee entering the project. Notably, 98.8% of the participants were female, even though only 87.7% of non-participant prostitution arrestees were female. This shows a clear

⁴⁶ *Id.*

⁴⁷ “Project 180, a Prostitution Diversion Program: An Assessment of Version 1,” Rebecca Pfeffer, Ph.D., October 2019, <https://gov.texas.gov/uploads/files/organization/criminal-justice/Project-180-Version1-External-Assessment.pdf>.

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gap in program participation by male, transgender and non-binary prostituted persons.⁴⁸

The average age of participants in the program was 27 years, with ages ranging from 17-63.

The average age of non-participants was 33 years, with ages ranging from 16-74. The racial demographics of participants and non-participants from the control group correlated quite closely.

Participants in the program self-identified their race/ethnicity as follows:

- Asian - 15.2% of participants and 13% of non-participants;
- Black - 46.8% of participants and 42.4% non-participants;
- White-Hispanic - 12.3% of participants and 10.8% non-participants;
- White-Non Hispanic - 24.4% of participants and 29.9% non-participants; and
- Other/Unknown - 1.3% of participants and 3.9% non-participants.⁴⁹

These demographics show that the program did a good job connecting with a racially and ethnically diverse group of trafficked individuals who all felt comfortable being program participants.

The assessment found that prostitution charges of 90% of participants who completed the program were dismissed, compared to 30% of non-participants; 1% of Project 180 participants pled guilty or were convicted, compared to 26% of non-participants. These results speak directly to the efficacy of the project in meeting its first stated goal – to reduce the number of potential trafficking victims from being criminally charged with a prostitution-related offense.

⁴⁸ Prostituted persons or potentially prostituted individuals is meant to encompass all victims of human trafficking, even if they do not self-identify as such. Many sex-sellers who fit the criteria for being a trafficked person do not self-identify as being trafficked, for a number of reasons. This language is meant to be as inclusive as possible towards all potential program participants.

⁴⁹ *Id.*

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The assessment also found that cost saving was an indirect benefit of Project 180 for Harris County. The County dismissed criminal charges for each participant who completed the program and saved approximately \$1,197 on incarceration costs.⁵⁰ For all the 311 individuals who participated in the fifteen-month period examined in the study, the county saved \$372,267 in incarceration-associated costs per person.⁵¹ It is unclear from the available data how much social service programs for program participants cost the county. It is also unclear whether the program funding from the Governor's Office went directly to pay for social services, or whether it was used elsewhere, such as for officer training.

Most importantly, however, there were significant mental health and other tangible benefits for program participants. Individuals who participated in the program and successfully completed it were not separated from family members, were not stigmatized for being imprisoned, and suffered no loss of employment.

One of the most notable results of the program was how many contact attempts took place between law enforcement and potential participants before participants scheduled and attended an informational session about the program. Most participants were contacted anywhere from one to thirteen times by law enforcement. A large percentage, however, (49%), only required one contact attempt to schedule and attend an informational session. On average, two contact attempts took place between potential participants and law enforcement officers.⁵² 90% of individuals who were referred to Project 180 engaged with the program through further informational and enrollment sessions.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

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c. Critiques of the Program and Recommendations for Improvement

Project 180 is still a relatively new diversion program, so there are no major criticisms that are noteworthy at this time. However, recommendations have been made on how to improve the program:

- The program data make it clear that men rarely took part in this program. It is exceptionally important to make sure all potential trafficking victims, not just female victims, have access to this program and the services provided. Out of 348 participants, only .6% of those involved in Project 180 were male. In comparison, males made up 12.2% of the 1,827 arrests for prostitution of non-participants. Prostituted males will often require different social services than their female counterparts. So it is vital for the county to know the number of prostituted males, and to address their unique needs. Outreach to prostituted males and inclusion in this program is essential to combat trafficking;
- The project coordinators should include transgender and nonbinary gender classifications in the intake and exit surveys, to ensure that services are available for every individual based on their unique needs. The same justification that applies to including prostituted males in the data applies to transgender and nonbinary individuals;
- The exit survey for Project 180 needs to be more expansive to allow as much valuable information to be gathered as possible, which will allow for a richer, more complete program that can service a wider range of individuals. Currently, the exit survey is only provided in English and Spanish. The exit survey should be translated into multiple languages, which are prevalent in the jurisdiction. Translators should be available for any individuals who do not speak or read any of the translated languages. There should also be regular meetings among the project team to reassess the exit survey and the information that is being gathered from it to determine any changes that need to be made. This will also allow for more substantive follow up with participants and service providers, after the participants have completed the program.

2. LAW ENFORCEMENT ASSISTED DIVERSION PROGRAM (LEAD)

a. About the Program

The Law Enforcement Assisted Diversion Program (“LEAD”) is a pre-booking diversion program for prostitution and low-level drug offenses. The program was piloted in Seattle and King County, Washington in 2011. At least twenty other LEAD programs in the country

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have followed (notably in Los Angeles, San Francisco, Albany, Portland, Santa Fe, Baltimore and others) with at least twenty-two more in development (notably New Orleans, Law Vegas, Denver, Brooklyn, Houston, and Honolulu).⁵³

The LEAD National Support Bureau “responds to the national demand for strategic guidance and technical support to local jurisdictions developing [LEAD] programs.”⁵⁴ The National Support Bureau, “is led and staffed by members of a team of public health and justice system veterans who designed the original Seattle LEAD program.”⁵⁵ To develop a diversion program under the LEAD umbrella, a jurisdiction contacts the LEAD National Support Bureau and can receive technical assistance and certification as an official LEAD program.⁵⁶ For purposes of this memorandum, LEAD will be discussed as one blanket program, although different jurisdictions may individualize the program based on local needs and demands.

Diversion in a LEAD model occurs after law enforcement have made contact with a potential trafficking victim, but before that individual is formally arrested for prostitution. LEAD allows individuals who have been detained for low-level drug and prostitution offenses to participate. “Pimps” and “buyers” are ineligible, as are individuals with certain criminal histories, including charges of murder, kidnapping or certain drug offenses. Whether an individual will be diverted to LEAD rests with the arresting officer who makes the initial contact with the individual.

⁵³ “About LEAD.” Frequently Asked Questions. LEAD, <http://leadkingcounty.org/about/>. 20 June 2018 Accessed; “Seattle-King County Police Diversion Program.” National League of Cities, <https://www.nlc.org/seattle-king-county-police-diversionprogram>; “Program Profile: Law Enforcement Assisted Diversion (LEAD) Program (Seattle, Washington).” Crime Solutions, July 11, 2016, <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=477>.

⁵⁴ “About the Bureau”, What is the LEAD National Support Bureau?, LEAD, <https://www.leadbureau.org/about-the-bureau>.

⁵⁵ *Id.*

⁵⁶ LEAD National Support Bureau, available at <https://www.leadbureau.org/>.

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Officers are trained in inclusion/exclusion criteria used to identify ideal possible participants. LEAD has been seen as quite successful at saving on costs for booking, charging, court appearances, jail time, recidivism and lost tax dollars.⁵⁷ The LEAD model requires law enforcement, public officials and community groups to work together. The program encourages participating entities, like law enforcement and social services providers, to regularly meet after a program has been implemented to review progress and discuss any necessary modifications.

LEAD is largely focused on individualized plans for each participant, created with an individual case manager.⁵⁸ Case managers work with participants to design Individual Intervention Plans that work to address each participant's needs in mental health, drug treatment, housing, education, employment, child care and other social services.⁵⁹ Alternative services that may also be incorporated into an Individual Intervention Plan include yoga and reading.⁶⁰ Services may also be specified for an individual's racial group, identification as LGBTQI+ or status as an immigrant.⁶¹

b. Critiques of the Program and Recommendations for Improvement

The LEAD program is considered to be largely successful.⁶² The program model allows participants to work with a case manager to create an individualized program catered to their specific needs. This allows participants to benefit from the resources that are most relevant

⁵⁷ From 2011 to 2018, the average cost per program participant dropped from approximately \$899 to approximately \$340, due to greater efficiency and increased coverage following implementation of the Affordable Care Act.

⁵⁸ "Survey of United States Diversion Programs: Sex Work and Sex Trafficking," Amara Legal Center.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² The main criticism of LEAD programs comes from sex workers' rights organizations, whose sole agenda is the decriminalization of prostitution. Those critics do not have any specific critiques of the program, other than it does not help to legalize prostitution. Given that prostitution is illegal in the United States (except in one Nevada county), this criticism, which does not even go to the substance of the program, is not relevant.

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to them, without wasting resources that are not relevant to their situation, that other participants may need. LEAD also does not have strict criteria for involvement, such as no prior arrest history, like some other programs. Allowing as many individuals as possible to access the program means that more people are given the opportunity to escape human trafficking.

An area targeted for improvement is training for case managers before they begin working with LEAD participants. Critics have noted that case managers sometimes struggle to adjust to a harm-reduction method, as many come from a 12-Step method background.⁶³ Case managers must be trained on public health oriented harm-reduction methods to provide the best possible service to program participants. Programs also need to find a way to address a victim's needs holistically. They should take into consideration factors such as homelessness and drug addiction, and how those struggles impact a participant's ability to complete the program.

B. COMMUNITY BENEFITS OF NON-TRAFFICKING RELATED PRE-ARREST DIVERSION PROGRAMS

Examining studies evaluating the effectiveness of other types of pre-arrest and pre-arrest diversion programs, for drug and substance abuse, and juvenile justice is helpful for devising a New Jersey human trafficking diversion program because human trafficking victims often also have other critical needs. Trafficking victims are often underage, dependent on controlled substances, and are arrested for crimes that are related to and ancillary to being trafficked.

⁶³ "Survey of United States Diversion Programs: Sex Work and Sex Trafficking," Amara Legal Center.

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Several studies show that local communities that hosted successful programs benefited as a whole. One benefit was lower recidivism rates. The 2000 study “Wrap Around Milwaukee,” which examined Milwaukee’s criminal youth diversion program, reported lower recidivism rates for participating youth, a year following the completion of program.

- The recidivism rate of youths enrolled in Wraparound Milwaukee⁶⁴ for sex offenses one year prior to enrollment was 11%. For program graduates the recidivism rate one year after enrollment dropped to 1%;
- For program participants, recidivism rates for assaults dropped from 14% to 7%;
- Weapons offenses recidivism rates dropped from 15% to 4%;
- Property-related offenses recidivism rates dropped from 34% to 17%;
- Drug-related offenses recidivism rates dropped from 6% to 3%; and
- “Other offenses” recidivism rates dropped from 31% to 15%.

Similarly, participants in a LEAD program, aimed at low-level criminal offenders, were more than twice as likely to be sheltered, more than 46% more likely to be employed, and 33% more likely to have an income through earned wages compared to people in the comparison group of individuals from non-LEAD neighborhoods.⁶⁵ LEAD participants were also 60% less likely to be arrested over the four years of the evaluation.

Another positive outcome of pre-arrest diversion programs was the increase in safe interactions between the police and the community. The “Crisis Intervention Team Model of Police Response to Mental Health Crises” (“CIT”) study, which examined multiple diversion programs throughout the country, reported that CIT improves small community

⁶⁴ Kamradt, Bruce. “Wraparound Milwaukee: Aiding Youth with Mental Health Needs.” (2000).

⁶⁵ Pfefferle, Sue, Steverman, Sarah, Gault, Elle, Karon, Samantha and Swan, Holly. Approaches to Early Jail Diversion: Collaborations and Innovations, ABT Associates, July 2019.

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safety outcomes.⁶⁶ Crisis intervention teams are trained to respond to those with mental illness and who are in crisis. Skeem & Bibeau (2008) found that CIT officers used force in only 15% of encounters rated as high violence risk, and that when they did use force, they generally relied on low-lethality methods.⁶⁷ Dupont & Cochran (2000) reported an association between CIT implementation in Memphis and decreased use of high intensity police units such as Special Weapons and Tactics (SWAT) teams.⁶⁸ A 2008 study of Chicago's CIT program found that CIT officers used less force, even when individuals resisted arrest, than officers who were not CIT trained.⁸¹ Officers also reported when they applied CIT skills reduced injury to officers and persons with mental illness.⁶⁹

C. EXAMPLES OF POST-ARREST DIVERSION PROGRAMS FOR TRAFFICKING VICTIMS

Post-arrest diversion programs are more common in the United States than pre-arrest models. This model requires an individual to be arrested. The prosecutor then agrees to defer prosecuting the individual if they comply with certain conditions. The conditions vary, but usually include: completing a drug treatment program, attending a support group, participating in counseling, or performing community service. Even though there is a record of the arrest, authorities will often agree to seal or expunge the record if the arrested individual complies entirely with the agreed-upon terms. If the terms are not complied with, the prosecutor may prosecute the individual, as if the person never entered the diversion

⁶⁶ Watson, A. C., & Fulambarker, A. J. (2012). The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners. *Best practices in mental health*, 8(2), 71.

⁶⁷ Skeem J, Bibeau L. How does violence potential related to Crisis Intervention Team responses to emergencies? *Psychiatric Services*. 2008; 59(2):201–204.10.1176/appi.ps.59.2.201 [PubMed: 18245166]

⁶⁸ Dupont R, Cochran S. Police response to mental health emergencies – Barriers to change. *The Journal of the American Academy of Psychiatry and the Law*. 2000; 28(3):338–344. [PubMed: 11055533]

⁶⁹ Hanafi S, Bahora M, Demir BN, Compton MT. Incorporating Crisis Intervention Team (CIT) knowledge and skills into the daily work of police officers: A focus group study. *Community Mental Health Journal*. 2008; 44:427–432. [PubMed: 18465226]

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program. Fortunately, unsuccessful participation in a diversion program does not alter the legal options available to an individual if she is subsequently prosecuted. For example, participants who leave the program may still fight a criminal charge, or plea to a lesser offense.

1. HUMAN TRAFFICKING INTERVENTION COURTS OF NEW YORK

a. About the Program

The Human Trafficking Intervention Courts (“HTICs”) of New York State were not established by the legislature, but rather, were created by the Chief Judge of New York’s highest court, the Court of Appeals.⁷⁰ What started out in three pilot courts in New York State in 2013, has expanded to courts in twelve New York counties. The New York HTICs are a post-arrest diversion program for victims of human trafficking.⁷¹ The New York Courts webpage notes that HTICs, “are committed to ensuring trauma-informed responses to justice-involved victims of sex trafficking.”⁷² HTICs create individualized, trauma-informed programs for participants, having served over 12,000 victims as of 2017.⁷³ Areas with HTICs have seen as much as a 56% drop in prostitution arrests within that jurisdiction.⁷⁴

To participate, individuals must be at least 21 years old and have been charged with a misdemeanor prostitution or prostitution-related offense. They must also display indicators of being trafficked or involved in commercial sex. Individuals are ineligible to participate if they have been charged with a felony or if they are deemed a “client” or “pimp.” Individuals

⁷⁰ “Announcement of New York’s Human Trafficking Intervention Initiative,” Center for Court Innovation (Oct. 4, 2013), <https://www.courtinnovation.org/articles/announcement-new-yorks-human-trafficking-intervention-initiative>.

⁷¹ “State Court Snapshot: New York State’s Human Trafficking Intervention Courts,” Center for Court Innovation, <http://cjinvolwedwomen.org/wp-content/uploads/2016/12/HTIC-1pager.pdf>.

⁷² “Human Trafficking Intervention Courts,” http://ww2.nycourts.gov/courts/problem_solving/htc/index.shtml.

⁷³ *Id.*

⁷⁴ *Id.*

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who successfully comply with the program may have their charges dismissed or reduced by a specialized trafficking court. There is no specified time frame for completion of the program, so participants may work through their individualized plan at their own pace. The HTICs have a policy of not sanctioning participants who do not comply with the program requirements (with the exception of a failure to appear, which will result in removal from the program and traditional criminal charges).

b. Critiques of the Program and Recommendations for Improvement⁷⁵

The most vocal criticism of the HTICs is that it is a post-arrest diversion program – individuals must be arrested before they can participate in the program. There is an obvious problem with arresting trafficking victims before providing them with necessary social services. Arresting someone does not help them in any way. Some groups have criticized the New York system for the wide discretion given to arresting officers, which they claim leads to over-criminalizing minorities through discriminatory practices.

The effectiveness of the Human Trafficking Intervention Courts has also been questioned. For example, some participants are required to attend only five therapy sessions. It is highly questionable that therapy can be effective in such a short time for trafficking victims who suffered serious trauma.⁷⁶ Critics have also noted that while the HTICs are

⁷⁵ The Red Umbrella Project is a New York based organization which claims to do, “community organizing and advocacy to make policy and systemic change to support the rights of sex workers.” They advocate for the legalization of prostitution in the United States. For this reason, many of their criticisms of any diversion program should be carefully scrutinized, as they appear to be critical of all programs that do not support prostitution legalization in the United States. Some critiques, however, concerning over-policing and racism should be taken very seriously. *See* 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).

⁷⁶ *Id.*

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called “human trafficking” courts, they only address prostitution-related crimes and do not address convictions related to other forms of trafficking.⁷⁷

2. CHANGING ACTIONS TO CHANGE HABITS (CATCH)

a. About the Program

The Changing Actions to Change Habits (“CATCH”) court was pioneered in 2009 in Columbus, Ohio.⁷⁸ The court is designed as a diversion program for victims of human trafficking and is spreading to various cities around the United States.⁷⁹ The mission of CATCH is, “[the] establishment of an integrated approach to meet the treatment, health, and behavioral medication needs of defendants who have been charged . . . with prostitution, solicitation, loitering to solicit, or other offenses if the defendant has a history of being a victim of human trafficking.”⁸⁰ CATCH is a post-arrest program that provides victims of trafficking with housing and food, which would normally be provided by a trafficker, in exchange for attending treatment for trauma and addiction, if applicable. Participants who comply with the program are eligible to have their criminal charge for prostitution or prostitution-related offenses expunged.⁸¹

b. Published Assessment of the Program

CATCH does not work for all participants, but it has shown significant success for many participants. Participants are subjected to regular drug testing and are required to physically

⁷⁷ Janie A. Chuang. “Exploitation Creep and the Unmaking of Human Trafficking Law.” *The American Journal of International Law*, Vol. 108, No. 4, 2014, pp. 609–649.

⁷⁸ “A Pioneering Ohio Courtroom Helps Trafficking Victims Find Hope,” Paige Pflieger, NPR, 7 Oct. 2019, <https://www.npr.org/2019/10/07/767850332/a-pioneering-columbus-courtroom-helps-trafficking-victims-find-hope>.

⁷⁹ *Id.*

⁸⁰ “CATCH Court: Changing Actions to Change Habits: Research Findings,” <http://www.htcourts.org/wp-content/uploads/CATCH-CourtFactSheet-1.pdf>.

⁸¹ *Id.*

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show up in court every week for two years.⁸² Unsurprisingly, considering the program's rigor, fewer than 1 in 4 of the women (it is unclear if male victims of trafficking are eligible to participate or have been considered to participate) complete the program.⁸³ Notably, even though not all participants are able to complete the program, the recidivism rate for those who participated dropped. Nationwide, the recidivism rate for women involved in prostitution is roughly 80%; it is approximately 40% for women who did not complete CATCH but participated and it is approximately 20% for women who graduate the CATCH program.⁸⁴

c. Critiques of the Program and Recommendations for Improvements

The CATCH model is criticized for being a post-arrest program, meaning victims of human trafficking are still in the criminal justice system. Further, it is a rigorous program, which many victims of human trafficking find very difficult to complete. The weekly court visits are particularly onerous. The program also does not appear to take into account the specialized needs of individual victims, instead providing blanket social services that the program deems beneficial to all victims of human trafficking. Finally, the CATCH court does not appear to be an accessible alternative to male victims of human trafficking who have been charged with prostitution-related offenses.

V. CONCLUSION

Human trafficking is a global scourge. Victims of modern-day slavery can be found in every community in every country. New Jersey is no exception. Trafficking victims across the

⁸² "A Pioneering Ohio Courtroom Helps Trafficking Victims Find Hope," Paige Pflieger.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Becca Kendis, *Human Trafficking and Prostitution Courts: Problem Solving or Problematic?*, 69 CASE W. RESERVE. L. REV. 805 (2019).

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state are forced to work in prostitution, massage parlors, strip clubs, hair and nail salons, and on large farms performing backbreaking slave labor. In fact, New Jersey is a hub for human trafficking in the United States, because of its interstate highways, international airports, and proximity to New York City and Philadelphia.

Starting with the building blocks discussed in this report, any jurisdiction in New Jersey should be able to develop a successful pre-arrest diversion program. Research has shown that arresting trafficking victims does not solve human trafficking; rather it limits victims' future prospects in every way, particularly by placing obstacles to survivors obtaining employment and housing. Successful diversion programs reach victims before they are arrested, and are tailored to the individual needs of victims and their communities.

It is critical for law enforcement to work in tandem with healthcare and other service providers, as well as with trafficking survivors, for diversion programs to work. Diversion programs should provide the wraparound services needed to increase participant confidence, independence, motivation to complete the program, and ultimately, each participant's earning capacity. In order to have any chance of curtailing and ending human trafficking, diversion programs should identify the signs of human trafficking, and work with community partners to remedy the conditions that allow human trafficking to proliferate.

VI. RECOMMENDATIONS

Successful pilot diversion programs can be replicated throughout New Jersey, but each program should be uniquely tailored to match the needs of each participating community. Research has shown that flexible, personalized care is the most important factor in a participant's success in staying out of jail and leading a productive life. Most successful programs were homegrown, and developed by innovative community members in response to local circumstances. Successful programs developed very context-specific solutions, in collaboration with community stakeholders. Because not every jurisdiction is the same, no two diversion programs in New Jersey can, or should, truly be the same.

The following factors, which were common in successful programs, should serve as a baseline for any New Jersey diversion program for human trafficking victims:

A. PRE-ARREST DIVERSION PROGRAM TAILORED TO EACH PARTICIPANT

- 1.** New Jersey should only consider adopting a pre-arrest diversion model. Pre-arrest diversion does not harm participants and do not saddle them with arrest records that limit their employment and housing options.
- 2.** Any diversion program must be trauma-informed and follow the public health-oriented model. Mental health experts and survivors must be consulted in the development stage of the program to provide project developers with the best trauma-informed guidelines. Even after program completion, victims should still have access to services that were provided during the program.
- 3.** Participants should be part of the discussion concerning the appropriate amount of oversight, such as drug testing, court appearances, etc. Oversight should be adjusted accordingly, as participants move through their programs. Individualized case plans should consider factors such as gender, race, language barriers, religion, culture, drug use, and prior convictions. While some individuals thrive in a CATCH court-style environment of strict oversight, many do not. Such restrictive programs should only be used with participants who demonstrate a true need for very structured programs.
- 4.** If possible, seemingly arbitrary and uniform deadlines should be avoided in any diversion programs. Project 180, for example, strives to filter participants through the program in sixty days. While it may be helpful to have a benchmark for program

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completion, it is most beneficial to participants to allow for a longer timeframe for program completion, based on each participant's needs.

B. INCLUSIVE AND BROAD PARTICIPATION

1. Participants in the program should be reflective of the community at large. Programs should do outreach to LGBTQI+ victims.
2. There should be no age restrictions for participating in any pilot program. For example, Project 180 was initially available for individuals arrested for prostitution who were between the ages of 17 and 24. It later expanded to include older individuals who did not have a prior arrest record. New Jersey should go a step further and include individuals of any age.
3. Individuals with prior arrest records for prostitution and other charges related to being trafficked (such as drug and weapons related offenses) should not be excluded. Many trafficking victims do not identify as being trafficked.
4. Prostituted males appear to be overlooked in nearly every program surveyed. While prostituted females make up the majority of sex trafficking victims, they are not exclusively female. In order for New Jersey's pilot program to be as inclusive as possible, the program should be cross-gender.
5. Labor trafficking victims should be eligible to participate in all programs.

C. HOUSING

When possible, housing should be included as part of the available services. The CATCH court program excels in this regard by providing housing and necessities to all project participants. Individuals who have been trafficked will often need critical shelter that their traffickers had previously provided. Stable housing can help keep trafficking victims on track for participating in various service programs. However, free government-sponsored housing is a very rare and valuable benefit. If someone is provided with free housing, they will most likely be subjected to rigorous government oversight, akin to what exists in the CATCH courts. Rigid oversight, such as weekly court meetings and invasive drug testing, may be too stringent for some trafficking victims.

D. TRAINING FOR LAW ENFORCEMENT

Police officers are often the first point of contact with trafficking victims. It is vital that they know how to recognize and effectively communicate with victims and potential participants.

Law enforcement must receive extensive trauma-informed trainings⁸⁶ that:

- Teaches indicators of trafficking and how to spot these indicators, particularly for prostituted victims;
- Teach officers how to talk to and approach suspected trafficking victims in a trauma-informed way;
- Cover a broad range of topics, including addiction, mental health, homelessness and recognizing individuals who show all the indicia of having been trafficked but who do not identify as trafficking victims.

E. COMMUNITY SUPPORT

Community collaborations are critical to success:

- “High-risk task forces” are task forces that use community resources and stakeholders to provide preemptive and holistic services for high-risk individuals.⁸⁷ These task forces consist of behavioral health providers and specially trained police officers.
- If forming a high-risk task force is not feasible, other types of coordinated projects, like crisis response teams have proven successful.⁸⁸ Such teams consist of psychologists and social workers trained in intervening in family crisis situations that might otherwise result in the removal of participants from their home, school, or community.⁸⁹

F. HEALTH CARE

- Wraparound health care services, including mental health;

⁸⁶ Frustration between behavioral health providers and police departments were frequently noted in the “Approaches to Early Jail Diversion” study. For example, in the “Crisis Intervention Team Model of Police Response to Mental Health Crises” study, health care providers believed that police officers lacked understanding of mental illness and would often exacerbate crisis situations. Surveys of officers indicated that they did not believe that they are adequately trained to effectively respond to mental health crises.

⁸⁷ Pfefferle, Sue, Steverman, Sarah, Gault, Elle, Karon, Samantha and Swan, Holly. Approaches to Early Jail Diversion: Collaborations and Innovations, ABT Associates, July 2019.

⁸⁸ *Id.*

⁸⁹ *Id.*

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- Health care providers should “de-clinic-ify” any centers that are used in the program. Having a center that feels homey rather than clinical could encourage participation and completion of the programs.

G. FREE LEGAL ASSISTANCE

Trafficking victims and survivors need free legal assistance. They need help with expunging and vacating criminal convictions, help with immigration matters and help responding to housing and employment discrimination (often because they have criminal records). Free legal services can be provided by NGOs, law school clinics, and volunteer lawyers. All lawyers in New Jersey are required to perform *pro bono* work. Helping trafficking victims with their legal matters should be on the state’s list of *pro bono* projects. Diversion programs should have a designated staff person, or volunteer, whose duties include matching program participants with volunteer lawyers. If New Jersey implements free legal assistance as part of its program, it will be the first diversion program in the nation to do so.

H. FUNDING

There must be appropriate funding for social services and police and other community stakeholders training. Programs that did not have sustainable funding failed. If needed, legislation should be passed allocating funding for diversion programs.⁹⁰ Potential funding sources include:

- Federal funding, including Medicaid and Medicare;⁹¹

⁹⁰ Police departments in particular have difficulty funding overtime to cover shifts needed for trainings. This is even more burdensome for small police departments

⁹¹ “Fighting the Opioid Crisis Through Substance Use Disorder Treatment: Study of A Police Program Model in Illinois,” as well as “Oakland Community Health Network”, a mental illness and substance abuse diversion program, utilized Medicaid funding.

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- State Appropriations, including:⁹²
 - State Attorneys Generals’ Offices;⁹³
 - State Department of Health and Human Services Funding;⁹⁴ and
 - Allocated state funds for police training.
- Local grants;⁹⁵
- University funding; and
- Private foundation funding.⁹⁶

I. EVALUATING PROGRAMS

It is critical to develop a methodology to evaluate diversion programs and pilot programs.

Most programs used qualitative criteria, because gathering and analyzing hard data for a quantitative analysis is more costly, and most diversion programs chose to allocate scarce resources to programmatic costs, rather than to collect data. Additionally, both law enforcement and behavioral health program staff identified difficulty in obtaining quantitative data in many instances.⁹⁷

The qualitative factors evaluated by successful pre-arrest diversion programs included:⁹⁸

⁹² New Jersey’s Attorney General is not elected and does not have an independent budget, so all AG funding in New Jersey is directed by the legislature.

⁹³ The “Drug Abuse Response Team” (DART) program studied in “Approaches to Early Jail Diversion” utilized funding from the Attorney Generals’ Office.

⁹⁴ Programs may be able to access funding from the Department of Human Services Division of Alcohol and Substance Abuse, or in few instances, private insurance. *See* Reichert, Jessica. (2017). Fighting the Opioid Crisis Through Substance Use Disorder Treatment: A Study of a Police Program Model in Illinois. Center for Justice Research and Evaluation Illinois Criminal Justice Information Authority.

⁹⁵ Community Health Endowment of Lincoln and Oakland Community Health Network utilized local grants.

⁹⁶ DART became a charitable 502(c)3 organization and was funded by donations and fundraising. *See* Pfefferle, Sue, Steverman, Sarah, Gault, Elle, Karon, Samantha and Swan, Holly. Approaches to Early Jail Diversion: Collaborations and Innovations, ABT Associates, July 2019.

⁹⁷ For instance, Oakland County, Michigan, a county participating in OCHN, has 43 separate law enforcement agencies. Some of the agencies that participate in the jail diversion program track data, while others do not.⁹⁷ Without access to data from all 43 agencies, it is difficult to know for certain which law enforcement techniques are effective, and how much contact a trafficking victim had with law enforcement before participating in a diversion program.

⁹⁸ *Id.*

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- Client outcomes, such as reduction in arrests or connection to resources;⁹⁹
- Training (program staff and partners) prior to program implementation;
- Types of treatment services available in a program’s community, including mental health, medical and insurance services;¹⁰⁰
- Service gaps in the community, such as limited capacity for certain social services;
- Amenability of law enforcement to changing the way they interact with individuals with behavioral and health disorders, and understanding how police define the problem the diversion program is trying to address;
- Behavioral health providers’ attitudes toward working with law enforcement;¹⁰¹
- Barriers encountered in planning the program and how were they overcome;¹⁰²
- Financial resources for planning the program. Are the funds limited or contingent on successful outcomes?;
- Presence of “program champions” who help with program implementation.

Because most programs face financial strain, collecting qualitative data is more cost effective. Qualitative data still provides important insight to the quality of programs. In deciding how New Jersey’s pilot diversion program will be evaluated, it is critical to allocate significant funds for collecting and evaluating quantitative data. It should also be clear from the start that funds for qualitative evaluation could be used for vital services for program participants.

⁹⁹ Kamradt, Bruce. “Wraparound Milwaukee: Aiding Youth with Mental Health Needs.” (2000).

¹⁰⁰ Pfefferle, Sue, Steverman, Sarah, Gault, Elle, Karon, Samantha and Swan, Holly. Approaches to Early Jail Diversion: Collaborations and Innovations, ABT Associates, July 2019.

¹⁰¹ Watson, A. C., & Fulambarker, A. J. (2012). The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners. *Best practices in mental health*, 8(2), 71.

¹⁰² Pfefferle, Sue, Steverman, Sarah, Gault, Elle, Karon, Samantha and Swan, Holly. Approaches to Early Jail Diversion: Collaborations and Innovations, ABT Associates, July 2019.