



National
Black Women's
Justice Institute

IC INTERRUPTING
CRIMINALIZATION

DIVERSION DERAILED

WHAT DO PARTICIPANT
PERSPECTIVES TEACH US
ABOUT THE TRUE MEANING
OF "DIVERSION" FROM THE
CRIMINAL PUNISHMENT SYSTEM?



CONTENTS

EXECUTIVE SUMMARY	3
INTRODUCTION	8
I. AN OVERVIEW OF DIVERSION PROGRAMS	11
II. A DEEPER DIVE INTO DIVERSION PROGRAM EVALUATION	20
SOCIAL SCIENCE LITERATURE	20
INDEPENDENT AND COMMUNITY-BASED RESEARCH	26
III. COMMUNITY-BASED VS. STATE DIVERSION PROGRAMS	32
IV. RECOMMENDATIONS FOR FURTHER RESEARCH	35
V. RECOMMENDATIONS FOR POLICYMAKERS AND PROGRAMS	38
KEY QUESTIONS TO CONSIDER FOR STRATEGIES TO DIVERT PEOPLE AWAY FROM THE CRIMINAL PUNISHMENT SYSTEM	48
CONCLUSION	49
ENDNOTES	50

EXECUTIVE SUMMARY

Purpose

This report offers recommendations for researchers, policymakers, diversion programs, and community organizations focused on diverting Black women, girls, trans and gender nonconforming people from criminal punishment systems. Our recommendations are based on an assessment of diversion programs through a Black feminist lens, which starts from the standpoint of the women and trans people who we seek to divert from prisons, policing, and criminalizing institutions.

Accordingly, in addition to conducting a literature review of current social science and community-led research concerning diversion programs, we hosted two listening sessions with Black women and trans people who had participated in diversion programs, and drew upon the transcripts of a participatory research study conducted by the National Council for Incarcerated and Formerly Incarcerated Women and Girls in 2021, through which over 100 participants investigated their experiences with the criminal punishment system.

What is a Diversion Program?



DEFINITION



Diversion programs represent one of the most popular criminal punishment system reforms. Generally speaking, diversion enables police, prosecutors, or judges (at their sole discretion) to offer someone the opportunity to avoid jail or prison on the condition that they successfully complete a series of mandated activities, which may include drug or mental health treatment, social services, or community service. These programs target people arrested for or charged with specific crimes like drug and prostitution-related offenses, or specific populations of people such as unhoused people or people with unmet mental health needs.

The Goals of Diversion

Generally, the expressed goals of state-run diversion programs are to:

1. Reduce the number of people in jail or prison
2. Lower incarceration costs, and
3. Provide a “rehabilitative” alternative to arrest, prosecution, and incarceration for individuals accused of certain crimes.

Within the **6Ds *Until She’s Free* framework** (bit.ly/6DsVideo) developed by Interrupting Criminalization in collaboration with organizations led by and/or serving criminalized

women, girls, and trans people, including the National Black Women’s Justice Institute, **diversion should mean dramatically reducing, and ideally eliminating, all contact with the criminal punishment system by directly preventing, addressing and transforming the conditions that bring women, girls, and trans people into contact with the criminal punishment system in the first place.**

Types of Diversion Programs

Typically, diversion programs are categorized by the **type of behavior or person** they target (i.e. drug use, involvement in the sex trades, mental health, theft, homelessness, veteran status, domestic violence, etc.), and the **point of intervention: pre-arrest, pre-booking, and post booking.**

PRE-ARREST:



Police may stop someone but not formally arrest them, allowing them to avoid an arrest record.

PRE-BOOKING:



The person is detained but not booked into the system or formally charged with an offense.

POST-BOOKING:



The person is arrested, booked, and charged.



STATE-RUN DIVERSION PROGRAMS

State-run diversion programs generally require some contact with the criminal punishment system, either through police or the courts. Many state-run programs require participants to plead guilty to an offense as a condition of accessing a diversion program, allowing them to withdraw their plea and the prosecution to drop the charges upon successful completion of the program.

State-run diversion programs have bring negative impacts for participants, including:

- **Increased surveillance:** including regular mandated drug testing, reporting to court or probation personnel, curfews, stay away/no contact orders, or electronic monitoring.
- **Increased criminalization and control:** State-run diversion programs often impose multiple requirements, including compulsory participation in counseling, classes, and medical interventions, and mandated sobriety, housing, and employment, enforced with threats of incarceration. Program requirements often impose financial burdens, interfere with employment opportunities and caregiving responsibilities, and can create conditions under which participants are at greater risk of violence or criminalization.
- **Non-confidential interventions:** the normal expectation of confidentiality between service providers and clients is often waived in the context of mandated counseling or treatment such that information shared by program participants is relayed back to police, prosecutors, and court personnel.
- **Persistent records:** Even if charges are dropped, arrest records can still affect future job or education opportunities.

COMMUNITY-BASED PROGRAMS

Our review of the social science literature and listening sessions indicate that diversion is more effectively achieved through community-based programs that focus on meeting individual needs while transforming collective conditions, offering flexible, voluntary support without further enmeshing participants in policing and criminalization.

The vast majority of academic studies on diversion measure program success based on re-arrest rates (recidivism). However, this

narrow focus on recidivism centers the goals of the criminal punishment system to have fewer people in jails/prison and save the system money, and misses the more important potential impact of diversion: improving the conditions of participants' lives, including housing, employment, economic stability, and voluntary, accessible health supports. A Black feminist analysis of diversion programs centering participants' experiences offers a more complete picture of effective diversion programs.

Recommendations

FOR RESEARCHERS

- **Move beyond recidivism-based outcome measures.**
- **Prioritize participants' perspectives in evaluating programs**, including those of Black women, girls, trans and gender nonconforming people. Ask participants questions like:
 - What would have prevented you from coming into contact with the criminal punishment system in the first place?
 - How would you define success?
 - Did the program help you achieve your goals?
 - Did the program improve your quality of life and safety?

FOR PROGRAMS AND POLICYMAKERS

- **Ensure accountability and act on participants' feedback.**
- **Provide services and support before involving the criminal system.**
- **Offer clear information about programs and ensure voluntary participation.**
- **Focus on individualized, non-judgmental care.**
- **Provide safe and affirming housing without conditions.**
- **Make programs accessible and eliminate fees.**
- **Ensure participants have access to programs that are specifically responsive to the needs of women, girls and trans people.**
- **Tackle the root causes that bring people into contact with the criminal system in the first place.**

Moving Toward Genuine Diversion

When assessing different diversion strategies, consider:

- What is participants' experience of the program? Could any benefits be achieved without contact with or further involvement of the criminal punishment system?
- Does the strategy produce a positive material change in the lives of participants?
- Does it (as a whole or in part) legitimize or expand criminalizing logics, institutions, or systems?
- Does it benefit parts of the criminal punishment system, industries that profit from it, or elected officials who sustain it?
- Does the strategy preserve the existing power relations of the system? Who makes the decisions about how the program will be implemented and the mandates enforced?
- Does it create division between “deserving” and “undeserving” people? Does it leave out especially marginalized groups (people with criminal records, parents, women, queer, trans, or undocumented people, etc.)?

Taking a Black feminist approach to diversion points us toward creating **supportive rather than punitive environments in communities and institutions**, meeting individual needs without the necessity of contact with the criminal punishment system, and ensuring that program participants have opportunities to express themselves, shape diversion programming, and exercise agency and self-determination in identifying and achieving their goals.



That, to me, is what diversion should be. **It should be something that we're being diverted to rather than just something we're being diverted from. You have to have something on the other side that we should be looking for as the reward for our effort.** That's not what happens all the time. There's nothing on the other side of this diversion. What am I being diverted to? That's what 'divert' is, to be diverted from, to something.

– TAMIKA, LISTENING SESSION PARTICIPANT

INTRODUCTION

Nearly two million people are behind bars on any given day in the United States.¹ For decades, women, girls, and LGBTQ people have been among the fastest growing population of people under the control of the United States carceral system (prisons, jails, probation, and parole).² The number of people incarcerated in women’s prisons increased 700% over four decades, outpacing the rate of growth of people in men’s prisons by 50%.³

One in two trans women faces incarceration in her lifetime, and lesbian, bisexual, and queer people are significantly overrepresented in prisons for women.⁴ In addition to the nearly quarter million women incarcerated, an even greater number – more than 1 million – are under the control of the criminal legal system

through probation or parole.⁵ Violations of conditions of probation or parole are among the top five reasons women wind up in jail or prison.⁶ While drug, property, and public order offenses are key drivers of incarceration for women and trans people, assaults and other “violent” offenses consistently rank in the top 5 arrest charges for women.⁷

In 2019 and 2020, Interrupting Criminalization (IC) gathered over a dozen organizations that have been fighting the growing criminalization and incarceration of women and girls for decades, many led by and working with criminalized, incarcerated, and formerly incarcerated women, girls, and trans people, including the National Black Women’s Justice Institute (NBWJI).⁸ Together, we articulated a framework for reducing and ending criminalization, policing, and punishment of women, girls, and trans people that guides IC’s work.

“6Ds Until She’s Free: A Comprehensive Cross-Sector Strategy to Interrupt, Reduce and End Criminalization and Mass Incarceration and Deportation of Women, Trans and Gender Nonconforming People,” (bit.ly/6DsVideo) is intended to inform policymakers, organizations, advocates, and philanthropic investment entering the field as a result of growing awareness of rising and disproportionate rates of incarceration of women, girls, trans and gender nonconforming people.⁹ **The 6 Ds are:**

- 1. DOCUMENT** the drivers of criminalization for women, girls, trans and gender nonconforming people;
- 2. DECRIMINALIZE** – target the policies and practices that put women, girls, trans and gender nonconforming people in contact with the criminal punishment, detention, and deportation systems;
- 3. DIVERT** people away from the criminal punishment system at the earliest opportunity;
- 4. DECARCERATE** people from jails, prisons, detention centers, and other places of incarceration;
- 5. DIVEST & DISMANTLE** by reallocating resources from systems of policing and punishment to meeting community needs, dismantling these harmful institutions, and divesting from policing and punishment as solutions to conflict, harm, and need; and
- 6. DREAM** transformative approaches to preventing, interrupting, and healing from harm.

While there is movement on all these fronts to varying degrees, policymakers, policy advocates, criminal punishment system stakeholders, and philanthropic leaders interested in reducing the number of people in jails and prisons have particularly gravitated toward the third “D” – deploying a range of strategies to divert people from jails and prisons.

This report examines diversion programs through a Black feminist lens, which starts from the standpoint of the women and trans people who are the purported beneficiaries of these programs. Applying a Black feminist approach to diversion programs changes the perspectives we prioritize, the questions we ask, the outcomes we measure, and an understanding of the role of the criminal punishment system, no matter which form it takes, in upholding the interlocking systems of oppression operating in the lives of women, girls, trans and gender nonconforming people. It also points us to how women and trans people are creating communities of care for and with each other outside the criminal punishment system as models for what effective diversion might look like. Through this framework, we hope to offer a vision of diversion rooted in the lived experiences of formerly incarcerated women and in communities of care.

We begin with a brief overview of diversion programs and the forms they currently commonly take. Next, we provide a brief overview and analysis of the social science literature on diversion programs, examining how they have been evaluated by academics, criminal legal system stakeholders, and the state and private interests that house and fund these programs. The core of our analysis of diversion programs is rooted in (1) community-based research that evaluates diversion programs from the perspective of people who went through them; (2) the voices of Black

women and trans people who participated in two listening sessions hosted by Interrupting Criminalization in the Summer of 2023; and (3) the recommendations of members of the National Council for Incarcerated and Formerly Incarcerated Women and Girls who engaged in a participatory research project rooted in their experiences of incarceration and carceral control in 2021. Throughout this report, we make critical distinctions between state-run diversion programs and Black feminist community interventions and programs aimed at supporting members and constituents

and diverting or extracting them from the criminal punishment system. Based on these perspectives, we offer recommendations for assessing diversion programs and building more effective diversion strategies rooted in the lived experiences of women, trans and gender nonconforming people and Black feminist practices of care.

Listening Sessions

NBWJI recruited Black women and trans people who had participated in diversion programs to two listening sessions by reaching out to our community partners at Women on the Rise, Solutions Not Punishment Collaborative, and the In Our Names Network. We hosted two 2-hour listening sessions – one for Black trans women (n=5) and one for Black women engaged in Women on the Rise’s 100 Women Rising Program (n=10). Participants were compensated for their time.

Listening sessions focused on a series of four questions:

- **How do you define diversion?**
- **What was your experience of participating in diversion programs?**
- **What was going on in your life when you first came into contact with the criminal punishment system? What did you need? What did you wish had existed?**
- **How should diversion programs be evaluated?**

Additionally, we drew on the transcripts of a six week participatory research study conducted by the National Council for Incarcerated and Formerly Incarcerated Women and Girls in 2021, through which over 100 participants investigated their individual and collective experiences with the criminal punishment system.

I. AN OVERVIEW OF DIVERSION PROGRAMS

Diversion is one of the most popular criminal legal system reforms. Generally speaking, a “diversion program” is an initiative through which police, prosecutors, or judges – at their sole discretion – offer to “divert” someone arrested or charged with specific offenses or under specific circumstances from jail or prison, on the condition that they successfully complete drug or mental health treatment, engage with social services, or participate in a community service program.

Diversion programs are generally intended to have both systemic and individual impacts by reducing the number of individuals who are incarcerated and the costs of incarceration to the state, while simultaneously providing individuals accused of certain crimes with a “rehabilitative” alternative to arrest, prosecution, and incarceration.

Evolution of Diversion Programs

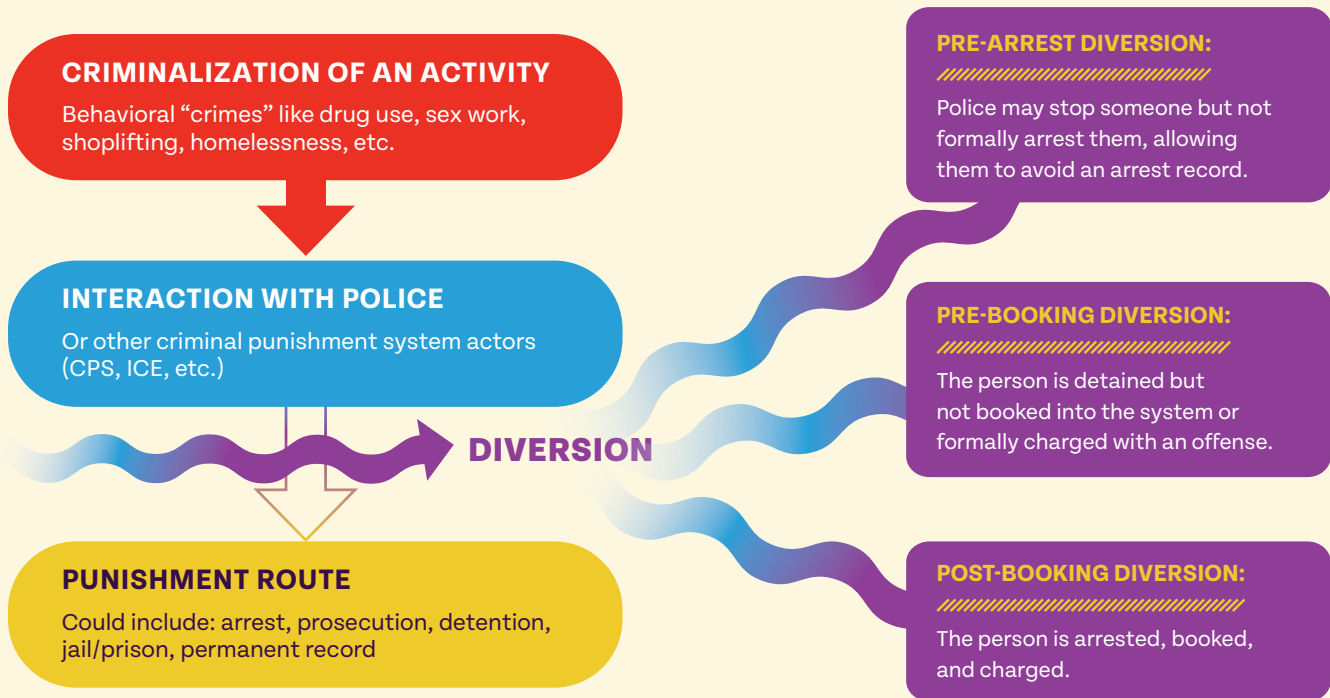
Diversion programs first made an appearance in the 1960s, when some states began passing laws to authorize drug treatment instead of prison sentences in some cases. In 1967, the President’s Commission on Law Enforcement

and Administration of Justice recommended that localities develop community-based programs for youth accused of low-level criminal offenses.¹⁰

The 1990s saw an explosion in the popularity of diversion programs, leading to the establishment and proliferation of specialized “problem-solving” courts to administer them – courts which specialize in hearing certain types of cases (i.e. “drug” or “prostitution” courts) or cases involving certain types of people (i.e. “mental health” or “homeless” or “veterans” courts), with a view to “solving” or addressing the underlying conditions which contributed to contact with the criminal punishment system (i.e. drug use or unaddressed mental health or housing needs). The first “problem-solving” court in the United States was created in 1989 in Dade County, Florida, as what we would now call a “drug court” – a court specially designated for people charged with certain drug-related offenses (usually low-level possession), which generally imposes standard requirements on people accused of these offenses as a condition of being diverted from or released from jail, including mandated drug testing and mandated drug treatment.

Since that time, thousands of diversion programs and “problem-solving” courts have been implemented in all parts of the United States, most commonly for people charged with drug-related offenses or deemed to be in need of mental health treatment,¹¹ and

PATHS TOWARD DIVERSION UNDER THE CURRENT SYSTEM



more recently have expanded into other areas including cases involving people who are homeless, veterans, or accused of involvement in the sex trades, driving while intoxicated (“DUI”), shoplifting, fare evasion, and other poverty and “quality of life” offenses.

Types of Diversion Programs

Typically, diversion programs are categorized by the **type of behavior or person** they target (i.e. drug use, involvement in the sex trades, mental health, theft, homelessness, veteran status, domestic violence, etc.), and the **point of intervention**.

The point of intervention ranges from pre-arrest and pre-booking to post-arrest or post-booking.¹² **The distinction between pre-arrest/pre-booking and post-booking diversion is critical.**

PRE-ARREST DIVERSION means that while a person may be approached or detained by law enforcement, they are not formally arrested or taken into custody, thereby avoiding an arrest record and diverting them from further engagement with the criminal punishment system. Typically, in pre-arrest diversion programs, police can exercise discretion to offer individuals the option to participate in a diversion program at the point of first contact.

PRE-BOOKING DIVERSION means that a person is first arrested but may not be “booked” – meaning that their photograph, fingerprints, and personal information may not be collected, and the details of their arrest may not be put into public record before they are offered the option of participating in a diversion program. If they elect to proceed with the diversion program, they may not be formally charged with an offense, or a charge may later be dropped, provided they successfully complete the program.

Most state-run diversion programs are POST-BOOKING programs initiated after a person has already been arrested, booked, and charged – meaning that there will be a formal record of their arrest and they will likely be formally charged with an offense – and will have to report both the arrest and charge if asked by a government agency or potential employer.

When the person accused of a crime appears before a judge for formal charging, sometimes the prosecutor or judge will recommend diversion as an alternative to proceeding with the case. Alternatively, many programs require that a person enter a plea of guilty to the charges brought against them before they are offered the option to participate in a diversion program instead of going to jail or prison. This guilty plea can be withdrawn if they successfully comply with the conditions imposed by the court.

However, even if a participant successfully completes a diversion program, the consequences of police and criminal court contact may continue to follow them. Unless diversion happens before arrest, arrest records and fingerprints can haunt program participants long after they have completed diversion requirements.

For instance, Tishana, a listening session participant who is now a staff person at a diversion program run by Women on the Rise, an Atlanta-based community organization, described, “I had a shoplifting charge and I went for a diversion group...I was sent to a few classes and I ended up receiving a certificate and the shoplifting charge was supposed to be off my record... The shoplifting charge, it did end up hindering me...I got the shoplifting charge, my fingers were printed. When I went to Job Corps, because my fingers were printed, I wasn’t able to take the CNA [Certified Nursing Assistant] course, but the diversion program was supposed to make it to where I didn’t have the charge...”

Limitations of Diversion Programs

Regardless of whether state-run diversion programs come into play before or after arrest, they still operate within the criminal punishment system, and access to them still hinges on contact with police and courts and availability of social service programs. As a result, programs’ impacts have been limited by narrow eligibility criteria, police and court discretion, and barriers to participant access to resources.¹³

In pre-arrest or pre-booking diversion programs, police often remain the first point of contact for people who may eventually be referred to diversion programs. As a result, police retain considerable power in the process: when cops approach individuals, they decide whether to offer the option of a diversion program, or to arrest the person and book them. This leaves the question of who is deemed “worthy” of diversion and who is deemed only worthy of jail up to police. Diversion programs in Albany, Atlanta, New Haven, and San Francisco have “struggled getting police officers to make referrals instead of arrests.”¹⁴ Additionally, police are known to exercise their discretion around who to arrest, when, why, and how in discriminatory and extortionate ways. Their power doesn’t end at the initial stop – cops can also testify in court about whether a diversion program would be “appropriate” and, in some cases, retain the power to decide whether someone who has not met program conditions gets another chance to complete a program or go to jail.

The same is true of other players in the criminal punishment system when it comes to post-booking diversion programs, including prosecutors, probation officers, and other administrative staff. In the end, rather than reducing the number, impacts and consequences of police and court contacts,

diversion programs give police, prosecutors, judges, and program and social service staff an incredible amount of power over program participants, including when determining which individuals – and which charges and behaviors – are “deserving” of diversion and which are not, and when an individual has sufficiently complied with program requirements and can “graduate” out of carceral control.

As researchers from Yale University and the New York City-based Sex Workers Project (SWP) concluded in a review of diversion programs,

“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 [Law Enforcement Assisted Diversion] 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.”¹⁵

They further note that “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.”¹⁶

Prosecutors hold even more power as they retain discretion with respect to whether they deem a person eligible for diversion, whether they will accept participation in a diversion program instead of charging them, and whether they will allow an individual to withdraw a guilty plea upon completion of a program.

As with all decision-making inside the criminal punishment system, discretion is routinely and systematically exercised in a discriminatory fashion. For instance, some studies have found that Black people are more likely to be arrested and less likely to be diverted.¹⁷ Additionally, the consequences of discriminatory decision-making compound to create more barriers to access to diversion programs: researchers from the Urban Institute noted that diversion programs “have also been charged with reinforcing systemic racial biases by excluding certain offenders based on prior convictions, and as a result of systemic differences in plea bargaining, charging, or sentencing practices.”¹⁸ In these ways, state-run diversion programs maintain and reinforce existing relations of power within the criminal punishment system by giving police, prosecutors, judges, and service providers discretion and control over people’s lives, which is often exercised in discriminatory and punitive ways.

Diversion Program Goals and Outcomes



According to a recent comprehensive review of social science literature, the overarching goals of diversion programs are to:

- Reduce the numbers of police contacts and arrests;**
- Reduce the caseloads of criminal courts;**
- Reduce the consequences of police interactions and criminalization;**
- Reduce the costs of incarceration.**¹⁹

In other words, the goals of diversion programs are “to prevent people accused of low-level offenses from penetrating further into the criminal legal system while also identifying people who would benefit from treatment

programming and referrals to behavioral health services in lieu of criminal legal sanctions.”²⁰

The primary outcome measured to assess whether these goals are being met is recidivism – in other words, does participation in a diversion program reduce the likelihood that an individual will be arrested again in the future? As the authors of the literature review put it, “recidivism was the most common outcome studied in police diversion studies...”²¹ By this measure, “most ... studies reported that ... participants who were diverted had fewer arrests or fewer jail days after the diversion program...”²² According to one study, this was particularly true for women, but not for Black people.²³ However, some studies found that the reductions in an individual’s likelihood of re-arrest following participation in a diversion program were not statistically significant – particularly in studies that took into account participants’ reports of re-arrest instead of relying solely on criminal punishment system records.²⁴

Moreover, documenting whether or not individuals who participate in diversion programs are re-arrested at some point in the future is not a direct measurement of whether the existence of a diversion program has led to an overall reduction in the number of arrests or criminal court cases. The overall number of arrests in a jurisdiction depends on a wide range of factors beyond whether individuals who participate in diversion are able to avoid future arrests, including police actions and priorities and the availability of resources in a community. For instance, studies which documented reductions in jail populations in communities where diversion programs exist also noted shifts in police policy and priorities and increased availability of community-based resources.²⁵ Similarly, the number of court cases and court costs depend on a range of variables, including administrative and prosecutorial decision-making.

Using recidivism as the primary measure of whether diversion programs are achieving their stated goals also obscures what happens to individuals during their participation in the program: for instance, it does not address whether the consequences of police contact – including experiences of police violence, loss of employment, and immigration or family court involvement – are ameliorated.

Additionally, diversion programs often impose intense surveillance, control, and harsh conditions on participants, including regular mandated drug testing, reporting to court or probation personnel, curfews, stay away/no contact orders, or electronic monitoring. They also usually require participants to engage with social and health services such as mandated “counseling” sessions with social workers, mandated “treatment” at an in-patient or out-patient facility, or participation in anger management, parenting, or job training programs.²⁶ Outcome measures focused solely on recidivism post-program involvement do not measure how much or how long an individual is subject to restrictive conditions and carceral control as a result of participation in a diversion program – which may increase rather than decrease their overall enmeshment in criminal punishment systems.

Diversion programs are generally understood and often experienced as preferable to a prison sentence – after all, as one group of researchers put it, “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.”²⁷ However, these programs do not necessarily prevent further involvement in the criminal punishment system or ameliorate the consequences of policing and criminalization. In fact, researchers at Yale University and the Sex Workers Project who conducted a review of research on diversion programs across the country concluded that the use of the term “diversion” is a misnomer,

as programs tend to pull individuals further into the criminal punishment system for longer periods of time.²⁸

One reason for this is that conditions of participation in diversion programs are often highly coercive, invasive, and undermine individuals' agency and ability to pursue education or employment, or care for themselves, their children, or other family or community members. Program requirements tend to replicate rather than subvert patterns of policing and punishment, as described in detail in Victoria Law and Maya Schenwar's book, *Prison By Any Other Name: The Harmful Consequences of Popular Reforms*.²⁹ Indeed, a study conducted by the Urban Institute with young people in the sex trades in New York City noted that even pre-booking diversion programs "have been criticized as coercive in that they act as an equivalent to custodial placement without the benefit of counsel or due process of law."³⁰

Rather than prevent incarceration, diversion programs contribute to it: "Diversion programs can, and most often do, become a pathway to incarceration – imposing burdensome conditions of surveillance and control that people can't meet, and which are often punishable by incarceration."³¹

As one program participant put it, **"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."**³² State-run diversion programs generally depend on coercion and/or the threat of punishment to compel these behavioral changes: failure to "comply" or meet program requirements can lead to increased and extended engagement with the criminal punishment system – up to and including incarceration, family separation, deportation or other harmful consequences, thereby undermining the stated goals of diversion

programs of reducing police contacts, criminal court case loads, jail and prison populations, and the consequences of criminalization.

Ultimately, widening the lens beyond recidivism-based outcomes and taking all of these realities into account, the researchers at Yale and the Sex Workers Project sound an alarm about "the failure of diversion programs to meet the goals that they set for themselves."³³ As Rachel Foran and Eli Hadley similarly conclude in their review of research on diversion programs on behalf of the Community Justice Exchange for beyondcourts.org, diversion programs don't actually result in a reduction in criminal court caseloads or the number of people subject to policing and carceral control – to the contrary, they often expand the reach, costs, and power of the criminal punishment system.³⁴

Net Widening



The investment of criminal punishment system players in diversion programs contributes to expanding their reach and control over targeted populations. According to the Urban Institute,

In cities where drug courts have been implemented, a phenomenon known as "net widening" has occurred, in which police arrest more people and prosecutors file more charges to include more low-level offenders that would have otherwise been released.³⁵

In other words, under the guise of offering "help," people who wouldn't otherwise have necessarily come into contact with the criminal punishment system – or may only have had a brief contact – are being pulled further into it. According to the Yale and SWP researchers, the creation of diversion programs "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.”³⁶ The same is true of the public – in one jurisdiction, police themselves called attention to “net-widening,” noting an increase in calls motivated by a desire to give people access to services through the criminal punishment system.³⁷

The Yale and SWP researchers concluded that state-run diversion programs “often fail to uphold the human rights and dignity” of participants given their “intrinsicly coercive design and implementation.” They also do not consistently provide available, accessible, acceptable, and quality health and social services or divert resources to meet the structural needs of participants. Instead, they enmesh them more deeply in court and criminal justice systems in ways that are neither transparent, sustainable, nor accountable to program participants.

The Yale and SWP researchers conclude that “little is known about the actual benefits and potential risks of these programs. At best, [they] 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).”³⁸

If state-run diversion programs are not meeting their expressed goals or participants’ needs, why do they continue to proliferate and remain popular among policymakers and reformers?

Diversion Program Drivers

If state-run diversion programs are not meeting their expressed goals or participants’ needs, why do they continue to proliferate and remain popular among policymakers and reformers?

The Yale and SWP researchers posit that the answer lies in part in the fact that, ultimately, diversion programs serve the interests of the criminal punishment system more than those of participants: “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. While the motivations driving the creation of diversion programs often appear to be generous and progressive, the implementation of diversionary programming calls into question its ability to truly “divert” individuals from the criminal justice system.”³⁹

In other words, in practice, state-run diversion programs represent a commitment to punishment in the name of support, to control in the name of care, and to penalizing individuals for the consequences of structural conditions that shape their lives, rather than preventing people from coming into contact with the criminal punishment system altogether by restructuring access to material resources and social support. They are largely based on punitive instincts that dictate that “something must be done” at an individual level about people who use drugs, trade sex, are unhoused, or have unmet mental health needs – that individuals must be “fixed,” rather than the conditions that

contribute to harm, deprivation, and violence, and that compliance with system mandates takes precedence over individual well-being, self-determination and agency in the process.

As the researchers put it, diversion programs’ “problem-solving” approach frames individuals as the “problem” to be solved and “eschews the economic and other structural factors at play; instead, this approach tends to track neoliberal ideologies and practices by blurring therapeutic and coercive mechanisms and focusing on individual problems and solutions instead of state responsibility and systemic change. The researchers go on to observe that, “Although the services provided through these ‘diversion’ initiatives may in fact deliver desired support for some individuals at times,” what is offered (individualized “treatment”) and what is not offered (consistent, long-term systemic access to resources) is an indication of the carceral interests they ultimately reflect.

Diversion programs also serve the interests of individual stakeholders in the criminal punishment system.⁴⁰ The Yale and SWP researchers traced the impetus behind a number of diversion programs and noted that many were started by judges, prosecutors, or social service programs in the criminal punishment system. Another researcher emphasized: “While much of the data about problem-solving court efficacy is ambiguous or inconsistent, one metric of success seems clear: judges like them. Problem-solving court judges describe presiding over these courts as the most rewarding and satisfying experiences of their careers. And they report higher job satisfaction than judges in traditional court assignments and are more likely to report that their court assignment has a ‘positive

emotional effect’ on them.”⁴¹ In other words, these researchers posit that “problem-solving courts” have solved a problem for judges: the return of the discretion and power they lost to the predominance of plea bargaining and mandatory sentencing guidelines.

“A lot of times, the programs are made and set up by people who haven’t been through anything. They just feel like it’s a good way to start up something. That’s how a lot of programs are. They tell you how you’re going to be able to do this, you’re going to be able to do that, but at the end of the day, it’s not looking out for the women, the men, or the children that’s within the program.”

– IMANI, LISTENING SESSION PARTICIPANT

Diversion programs also solve problems for policymakers looking for ways to respond to calls to reduce the numbers and costs of incarceration while simultaneously maintaining and even expanding carceral control. In more recent years, politicians who have historically advocated for tough-on-crime policy and are directly responsible for the buildup of the prison industrial complex also began to advocate for diversion as public attitudes about mass incarceration and policing shifted – thus appearing to be doing something about the problem while simultaneously fueling the systems that produce it. As Foran and Hadley write on behalf of the Community Justice Exchange for beyondcourts.org, “Diversion programs are not in opposition to the carceral state; in fact, they are a part of the state’s adaptive work to continuously legitimize itself, and are then used as a justification to increase funding to the legal system to fortify the system even more.”⁴²

What would it look like to “look out for” the people who are supposed to benefit from diversion programs?

Foran and Hadley situate the increasing popularity of diversion programs and “problem-solving” courts within a larger pattern of divestment from communities and expansion of criminalization of community members experiencing the consequences. In other words, they are a mechanism of transferring responsibility for the fallout of de-industrialization, cuts to social programs, and organized abandonment to individuals who bear the brunt of these policy decisions, who are first criminalized and then offered opportunities for “rehabilitation.” At the same time, diversion programs are contributing to the problem by diverting a significant amount of funding and other public and philanthropic resources into diversion programs, further funneling resources away from chronically underfunded services such as schools, affordable housing, and voluntary, harm reduction-based, and accessible health services, all of which are proven ways to prevent and address the root causes of violence and “crime.” Foran and Hadly write,

Diversion programs and specialty courts allowed the state to say it was taking action to curb incarceration, while simultaneously transferring the responsibility of social welfare from the government onto private, for-profit companies, and nonprofit agencies. Diversion programs and specialty courts have only become more popular over the last two decades amidst both the wreckage of over 40 years of state and capital divestment, as well as a growing bipartisan consensus to “end mass incarceration.” As it becomes less popular to put people in cages (for moral, but also financial, reasons), the legal system is imposing new forms of social control under the guise of coerced treatment, care or services...⁴³

Finally, diversion programs persist because they are profitable. Industries invested in

the continuation of the carceral system, including those that produce surveillance technology, private companies that provide drug and mental health treatment and social welfare services, and privately owned group homes and transitional housing, all profit from the proliferation of diversion programs, and have thus been among their most powerful proponents.

So what would it look like to, as Imani put it, “look out for” the people who are supposed to benefit from diversion programs?⁴⁴

II. A DEEPER DIVE INTO DIVERSION PROGRAM EVALUATION

Who gets to write the story of the success or failure of diversion programs? Despite the growing popularity and expansion of diversion programs over the past three decades, there are no standard oversight or measurement protocols, leading to widespread differences in program data collection and evaluation.

As noted by researchers from the Sex Workers Project and Yale University, “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.”⁴⁵

We reviewed both academic, peer-reviewed literature and independently published community-based research to understand what stories are being told about diversion

programs, by whom, for whom, and how they’re defining program “success.”

Social Science Literature

There are dozens of academic peer-reviewed studies focusing on diversion programs, many of which are analyzed and cited in [Problem Creating Courts](#). What follows is a brief summary of diversion program evaluation research based on meta-analyses and literature reviews, as well individual articles analyzing programs through the lens of gender, race, and/or sexuality.

How do academic researchers define “success” for diversion programs? – Choosing Outcome Measures

Most of the peer-reviewed academic research on diversion programs (and on the criminal punishment system in general) is conducted by scholars, practitioners, and service providers in the fields of criminology, psychology, sociology, social work, mental health, and



public health. These researchers shape perceptions of diversion programs through the outcomes they measure and choose to emphasize. Despite the interdisciplinary character of researchers, virtually all the social science literature on diversion programs is quantitative in nature, measuring rates of program completion, recidivism, and financial cost savings to the criminal punishment system.

Most academic studies focus on responding to a single question: do diversion programs reduce recidivism rates? In other words, researchers analyzed the effectiveness of diversion programs by asking, “does this program(s) reduce the number of times a person is rearrested, charged, and/or incarcerated, especially for the same offenses?” privileging both criminal punishment system metrics and priorities. For example, Linquist-Grantz et. al. (2021) analyzed 31 empirical studies of drug-related diversion programs and summarized the outcomes related to 1) recidivism; 2) substance use; 3) participant “psychosocial functioning;” 4) service utilization; 5) cost-effectiveness; and 6) “other” outcomes. Notably, the review “did not produce definitive conclusions about the effectiveness of substance use diversion programs.”⁴⁶

Diversion participant perspectives, experiences, and material needs are notably deprioritized in the literature reviewed. Relatively few studies examined outcomes related to program participants’ housing, employment, income, satisfaction with quality of life, hopefulness, and perceptions of general health and well-being.⁴⁷ Moreover, in studies

where other outcomes were measured – such as number or proportions of participants who were permanently or temporarily housed or “housing ready,” or “on the employment continuum” – participant satisfaction with the housing or employment offered or obtained through diversion programs was not measured. Nor was their ability to sustain permanent, quality, accessible housing or a living wage income in the long term.⁴⁸

Diversion participant perspectives, experiences, and material needs are notably deprioritized in the literature reviewed.

Approaches such as these do not take into account participants’ perspectives or priorities with respect to measured improvements in participants’ material conditions or quality of life. Nor do they focus on how those improvements might have been made without subjecting participants to coercive and adverse impacts of contact with the criminal punishment system. Thus, by narrowly focusing on recidivism as a marker of individual and systemic success, research on diversion programs obscures potential adverse outcomes for individual participants. While a diversion program participant may follow program rules such that they will be deemed to have successfully completed it, this does not mean that the conditions of their lives have substantially and sustainably changed or improved. Nor does it mean that they are not continuing to experience harm – both inside and outside the criminal punishment system.

In fact, efforts to complete diversion requirements may result in increased violence, or vulnerability to harm – for instance, trading sex may have enabled a person to live on their own, but compliance with a diversion program’s requirement that they “exit” the sex trade may force them to return to live with someone who

is violent or abusive, or secure employment that is unsafe, harmful, or insufficient to meet their needs. Additionally, program mandates (including coercive medical interventions) are often experienced by program participants as state violence, create opportunities for abuses of power by police and program staff, and frequently impinge on participants' self-determination and capacity to care for themselves and others. Yet experiences such as these are not visible in the evaluation literature, nor is the increased isolation and vulnerability to violence that program requirements may produce through restrictions on movement, association, and program conditions.

“I went through a prostitution diversion program. They did expunge the whole record around me being arrested for that crime – which shouldn’t be criminalized, it’s about my survival, but so be it. I didn’t have a choice. I either go in their program or else I go through prosecution. To me, it wasn’t a choice, it was a thing of being coerced.

But what I remember of that program was that they were teaching me how not to get arrested ... the number one thing for sex workers is to keep them from being rearrested. If they’re not providing me with another way to produce income for myself, then the only option that the instructor had for that class was to teach us ways to avoid arrest.

I got arrested because I was sex-working. The program put me into a problem because now I have a curfew. How do I, as an adult, have to follow a bunch of rules, but then I don’t have the necessary supports to help me to follow these rules? I was still homeless, I did not get any housing assistance. I didn’t get any additional food assistance. I did not get no financial assistance, which was the number one problem why I was out there doing sex work.

I have bills to pay, I still had children that I had to take care of. They didn’t help me with no job searches for someone that would hire a drug-using sex worker.

I still needed to go out and make money, so I had to be a lot craftier about it. That was when I really started paying attention to learning how to dress in all black so I could blend in with the shadows, duck in between two cars, or when you see the police duck down behind parked cars and sit until they pass. Which put me in the path of people that are paying attention walking by, and thinking, ‘Oh, so you hiding from the police. Good. They didn’t see you. I might be able to rob your ass. I might be able to physically harm you. I might be able to rape you.’ Shit like that was happening to girls all the time because they’re ducking and dodging the police. I’ve had those experiences myself. That shit’s not solving anything.”

– TAMIKA SPELLMAN, LISTENING SESSION PARTICIPANT

Moreover, a narrow focus on system-defined markers of successful completion of diversion programs rather than a holistic approach that prioritizes participant perspectives, experiences, and goals takes the focus away from the conditions that brought participants into contact with the criminal punishment system in the first place, effectively ignoring opportunities for prevention and early intervention that would enable them to avoid contact with the criminal punishment system altogether.

If our analysis of diversion programs focused on improving participants' and communities' material conditions like housing, ongoing access to health care and mental health supports, family support, and economic stability, reducing violence, including the violence of policing, criminalization and punishment, and increasing individual and

collective self-determination and agency on a long-term and systemic basis, we would have a more comprehensive picture of the overall impact of diversion on participants' lives and trajectories, and of more effective pathways for diverting people from the criminal punishment system.

Uplifting participant perspectives in the available literature

The literature on diversion programs rarely assesses impacts or outcomes from the perspective of program participants themselves, contributing to critical information gaps about the individual and collective impacts of these initiatives. A 2023 systematic review of 47 studies on pre-arrest diversion programs found only one study that included participants' experiences as an outcome.⁴⁹ In it, college students interviewed 32 diversion program participants over a month-long period, asking them about its advantages and disadvantages, how it compared to other social service programs, participants' relationships with police before and after participating in the program, and participants' perceptions of how case management offered through the program impacted their lives.⁵⁰

While virtually all participants described positive impacts of the program, a third had never previously accessed social services, and several reported conflicts with case-managers and an absence of housing options that did not require abstinence from drug use. Fewer than half avoided police contact following participation in the program. Participants valued a non-judgmental, harm reduction-based approach, trust with service providers, prioritizing participant needs, and participation in their own case management – elements that are largely absent in most diversion programs. Notably, this was the only study of a nationally promoted program that documented participant perspectives, reflecting system-focused program priorities.

As is the case for most diversion programs, the authors of the study noted that, “The primary aim of the ... program is to reduce criminal recidivism. Secondary aims include reductions in criminal justice service utilization and associated costs, as well as improvements for housing, employment and income/benefits.”⁵¹ Positive participant experiences and improved quality of life or long-term sustainable changes in participants' material conditions are notably absent among priorities.

The authors of the 2023 literature review noted that, “there is an urgent need for rigorous, unbiased literature on diversion programs' effectiveness, impact, and quality,” and particularly for studies that capture participants' qualitative experiences: “Qualitative experiences of diversion program participants... are needed to determine the quality, depth, and dimensions of the experience of diversion, to understand the theoretical tensions in the work, and to document best practices, pitfalls, and lessons learned in administering these programs.”⁵² The review concluded that, based on the available literature, diversion programs may be saving the system money, but “there is little evidence that the behavioral health of participants is likely to increase due to diversion without additional or more sustained services.”⁵³ Similarly, researchers from Yale and the Sex Workers Project found that participant feedback is not formally collected or considered in the majority of diversion programs they contacted.⁵⁴

In our own review of the literature, we similarly found very few studies that included participants' perspectives on diversion programs, particularly when it comes to qualitative data. Those that did include participants' voices and assessments offered valuable insights into what effective diversion from the criminal punishment system looks like.

○ **In one study of a culturally-specific youth diversion program, researchers found that Latinx children and families participating in the program had positive experiences with the program because staff “used culture and language to help build on the ideas of strengths rather than deficits,”** and supported Latinx youth in creating their own counternarratives to those that had been projected or imposed on them based on their immigration experiences and identities. The study concludes, based on participant perspectives, that schools – which were the source of much of the alienation, disconnection, and punishment that contributed to students coming into contact with the courts in the first place – “should focus on proactive youth supports instead of reactive punitive consequences.”⁵⁵

○ **A mixed method assessment of a Philadelphia-based diversion program interviewed 30 clients, of whom 45% were homeless, 63% were living in poverty, and 69% had some problematic involvement with substance use.**⁵⁶ Program goals include “reducing arrests, addressing unmet needs of people in the community,” by taking an adaptive, non-punitive approach that addresses root causes and is “person centered.”⁵⁷ The majority of clients reported positive experiences primarily focused on avoiding arrest and accessing resources – however, it is notable that both of these outcomes could also be achieved through diversion strategies that did not involve the criminal punishment system. Indeed, many participants attributed high levels of engagement with the program to “an inadequate supply of social and health professionals working in the community.”⁵⁸

Clients also noted dissatisfaction with the quality and unavailability of housing offered through the program: “A few

participants suggested that there is a mismatch between the services that PAD advertises and the services that PAD provides. Some of these perceived deficits related specifically to PAD services while others, like inadequately diverse housing options, were features of the broader referral ecosystem in the city.”⁵⁹ Researchers note the flaws in diversion program evaluation methodology, noting that participants who had a positive experience of the program are more likely to participate in evaluations. Nevertheless, they conclude that diversion programs “must center the experiences of people in distress and not the police or providers serving them,” and require “far greater investments in public health infrastructure like housing and services that meet people where they are.”⁶⁰

○ **In another study, researchers spoke with twenty-one people who had completed the Baltimore City Specialized Prostitution Diversion Program (SPD).** The findings indicated that, while some participants found the program helpful because compassionate staff offered better connections to social services than they were otherwise able to make, overall participants were seeking opportunities to access what they needed without the necessity of court intervention or involvement in the criminal punishment system. As Maria, one of the participants, put it, “It’s a wonderful program. I mean, unfortunately, I had to do it through the courts...***I wish there was more programs that actually was offered like that without having to go through the courts.***” The study authors echoed her perspective by asking: “Why [is] the assistance that is provided through such programs not more widely available without the need for criminal justice as a gateway?”⁶¹

Moreover, even with increased access to services, participants in the Baltimore program were still precariously housed and/or in precarious economic situations at the time they completed the 90-day program, leading the researchers to conclude: “Our study shows a dire and ongoing need for material assistance, such as housing, health care, addiction treatment, mental health services, educational and vocational services, and documentation to qualify for services.”⁶²

- **In 2007 researchers conducted an evaluation of the Women’s Support Program, a Connecticut jail diversion program, by inviting all participants to participate in an evaluation study consisting of face-to-face interviews at program entry, 6 months, and 12 months post-program entry.** 128 women participated (31.3% Black) and all were compensated for their time. Researchers found that at the time program participants came into contact with the criminal punishment system, women were experiencing housing instability, family dysfunction, low rates of employment, and high rates of substance use and trauma. A year later, they reported “significant improvements in several key areas: substance use; employment; criminal justice (arrests, non-legal income); trauma symptoms; existential well-being; and hopefulness.”⁶³ However, interviews focused primarily on questions about drug and alcohol use and ER admissions, and administering screening tests for these factors, rather than engaging participants in conversation about their needs, desires, and experiences of the program. Researchers noted that many women brought before the criminal court were not interested in participating in the program – but did not interview them to gain greater insights into why, simply drawing their own conclusions: “Perhaps some women

did not accept the program because, unlike traditional diversion services, it required a large time commitment. In the early weeks of their involvement, some women were expected to see a clinical case manager about every other day.”⁶⁴ For people struggling to survive, the time commitment required of diversion program participants can literally mean choosing between attending a meeting and finding (or keeping) a safe place to sleep at night.

Interestingly, the researchers concluded, “While this evaluation showed extremely good outcomes for the program of case management and women involved, it must be noted that the comparisons of women before and after program involvement represents a weak study design. Most people who are enrolled in programs during a low point in their lives will experience improvements, and it is only through a well-controlled study design that one could definitively attribute improvements to program involvement.”⁶⁵

- **“An Overview of California’s Girls’ and CSEC Courts: Process Evaluation Report,” published by the Center for Families, Children & the Courts,** reported on a focus group with diversion program graduates and included quotes from program participants in their research. The findings revealed that what participants found most useful about the program was the presence of compassionate and consistent adults who treated them as individuals rather than “defendants.” The study was limited by only including the perspective of successful graduates, potentially excluding participants who had negative experiences or may not have chosen or completed the program.⁶⁶

Race, Gender, and Sexual Orientation

As we reviewed the social science literature on diversion programs, we wanted to prioritize research that surfaced the experiences of women, queer and trans people, and people of color. That task proved more difficult than we imagined. Most programs are designed to address specific “problems” (substance use, mental health, involvement in the sex trades, etc.) or general populations (unhoused people, veterans) rather than for gender-specific populations, and are routinely evaluated without regard to the race, gender, or sexual orientation of participants. The pervasive absence of nuanced demographic analysis of the impacts and effectiveness of diversion programs furthers the false narrative that diversion can take a “one-size-fits-all,” “problem”-based approach.

Moreover, even when researchers do provide identity-based demographics, they rarely explore how criminalization and power operate in the criminal punishment system along these axes of oppression. As researchers from the Sex Workers Project and Yale University concluded, “current evaluations and critiques of the “problem-solving” movement in criminal justice reform...do not fully capture all of the specific issues arising out of the regulation of gender and sexuality, including as they intersect with race.”⁶⁷ Gathering and analyzing participant perspectives, with a focus on women and queer and trans people of color’s experiences of diversion programs, is essential to surfacing these often hidden forms of

Gathering and analyzing participant perspectives, with a focus on women and queer and trans people of color’s experiences of diversion programs, is essential to surfacing these often hidden forms of policing and gender-based state violence embedded in state-run diversion programs.

policing and gender-based state violence embedded in state-run diversion programs.

Independent and Community-Based Research

In addition to examining the academic literature on diversion programs, we looked at studies conducted by community organizations related to diversion programs and specialized courts. We found that independent and community-based research was more likely to include the perspectives of diversion program participants and to evaluate the experiences of women, girls, and queer and trans people.

For instance, in 2014, the Red Umbrella Project, an organization led by and for people in the sex trades, published *Criminal, Victim, or Worker? The effects of New York’s human trafficking intervention courts on adults charged with prostitution-related offenses*. The report presents the findings of courtroom observations of 364 cases in the Brooklyn and Queens Human Trafficking Intervention Courts, which offer diversion in prostitution-related cases. Unlike nearly all academic research on diversion programs, this study a) was peer-led (researchers were people with experience in the sex trades), and b) featured individual participant perspectives offered through a series of case studies included in the report.

Researchers concluded that this widely promoted state-run diversion program had several limitations. From a process standpoint, the lack of interpretation services and of multilingual diversion programs prolonged

system involvement for people accused of prostitution-related offenses who were most comfortable speaking in languages other than English, particularly for Mandarin-speaking defendants. This shortage of diversion programming for non-English speakers doubled the length of time individuals were forced to remain under the control of the criminal punishment system to complete the diversion requirements – thereby defeating the goal of reducing criminal court caseloads and engagement with the criminal punishment system. Similar service shortages and extensions of criminal punishment system involvement have been reported by trans people, given the shortage of trans-specific programming and programs that accept trans participants or welcome them in a manner that affirms their gender identity.

From a substantive perspective, although the program’s goals were to offer a “just and compassionate resolution of prostitution-related cases,” the program operated based on a narrow, incomplete understanding of involvement in the sex trades, presuming that all involvement was induced by force, fraud, or coercion, resulted in trauma, and should immediately end. It, therefore, required all participants to attend counseling and exit the sex trades, often imposing orders to stay away from certain people or locations and requiring participants to avoid re-arrest. Successful completion of the program was measured simply in the number of sessions attended – not whether participants had benefited from the sessions, or whether anything had changed in terms of the material conditions that brought them into contact with the criminal punishment system.

The Red Umbrella Project researchers noted that “HTICs [Human Trafficking Intervention Courts] have put forth the idea that health and social services are a necessity for people arrested on prostitution-related offenses.

However, is ‘success’ in engaging in social services, especially therapy, really measurable by program completion...?”⁶⁸ By speaking with participants, researchers found that arrest, court involvement, and mandated participation in counseling did not result in a “just and compassionate” resolution to their cases, nor did it end violence against people in the sex trades (another motivating factor for the creation of the program), nor did it address the economic conditions and barriers to migration that drive exploitation across all industries, including the sex trades.⁶⁹ At worst, program requirements actually impeded participants’ progress. One of the researchers and authors of the Red Umbrella report wrote:

I didn’t need to be treated for sex work. That isn’t an illness ... the sessions ... hampered my ability to create a better environment for myself and my children so I wouldn’t have to rely on sex work. ... They didn’t give me what I needed, either ... suggesting that I just stop sex work and my life would be magically improved. ... Stopping sex work for me means not being able to make money. All the odds were stacked against me. Nobody was hiring an 18-year-old parent of three young children with a full college schedule.⁷⁰

Additionally, under the guise of benevolence and “helping” people participating in the HTIC, the presiding judge frequently engaged in racialized gender policing, ordering those appearing before her – who, given that they make up over 80% of people arrested for prostitution,⁷¹ are overwhelmingly Black, Latina, and Asian – to “cover up” to “show some respect” for themselves and the court. An individual interviewed by researchers from the Sex Workers Project and Yale University recounted that the judge in her case often commented on the clothes that program participants wore to court, saying, “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.”⁷²

Four years after the *Criminal, Victim, or Worker?* report, the Sex Workers Project and Yale researchers came to similar conclusions about HTICs as the Red Umbrella Project, based on “facilitated in-person, in-depth interviews with past program defendant/participants in several different locations,” in addition to in-depth interviews with program staff and service providers and site visits to observe programs in session.⁷³ As one participant they spoke with put it,

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 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. ... 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 fuck 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!⁷⁴

One of our listening session participants, Tamika Spellman, offered a similar perspective, highlighting that, ***“the number one obstacle for trans women that's going to always come up for me is going to be housing. Second would be financial stability issues. Third is going to always be food insecurity. We don't have it like that. If we don't have family that's supportive of us, we generally have to do what we have to do to survive. A lot of times***

these programs don't have the wraparound services to make sure that we can thrive and not fall back into whatever activity it was that we were being diverted from.” Indeed, while service utilization may increase, one study found no impact of diversion programs on mental health symptoms or drug use, and the authors of a comprehensive literature review concluded that, “There is little evidence that the behavioral health of participants is likely to increase due to diversion without additional or more sustained services.”⁷⁵

Based on their review of research on diversion programs across the country, the Sex Workers Project and Yale researchers assert that court-mandated diversion programs are unable to “reliably and efficaciously provide services that are of sufficient quality and quantity to meet defendants’ varied needs,” including “housing assistance, economic opportunities, immigration assistance, childcare support, and a range of health care services.”⁷⁶ When it comes to HTICs, there are similar concerns that the demand on service providers to meet HTIC mandates “outstrips the ability of providers to provide timely, comprehensive, and high-quality services to defendant and non-defendant populations.”⁷⁷ Additionally, they questioned whether the provision of these services through the criminal punishment system was appropriate or effective:

While the services offered via the HTICs (primarily counseling, case management, and referrals – regardless of need or readiness to engage) are desired by some defendants, the question remains whether making them contingent on involvement in the criminal justice system is appropriate in a health justice framework as well as effective in responding to the structural needs of defendants.

They noted that such an approach “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.”⁷⁸

Urban Institute researchers, made up primarily of young people with experience in the sex trades, interviewed hundreds of queer and trans youth at risk of criminalization for prostitution-related offenses, and concluded that instead of an “arrest-referral model” that “effectively makes access to certain programs and services conditional on being arrested,” states should instead be focused on increasing “access to services by increasing appropriations for voluntary and low-threshold service programs that provide what youth engaged in survival sex have identified as their basic needs. Low-threshold programs make minimal demands on the client and provide counseling and other services only if requested. Crucial services, described in more detail in our earlier report *Surviving the Streets of New York*, include food security, supportive housing, lockers, showers, gender-affirming health care, living-wage employment options, assistance with Temporary Assistance for Needy Families and Social Security benefits, and legal services to address the consequences of conviction.”⁷⁹

Researchers at Yale and the Sex Workers Project similarly took as their “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 ... are deeply marginalized and disempowered by the same state touting its beneficence.”⁸⁰ The Urban Institute researchers also noted that diversion program participants “report that court mandates interfere with treatment because the threat of reporting for noncompliance introduces an inappropriate influence in the therapeutic process and breaches confidentiality protocols.”⁸¹

The absence of confidentiality for court-mandated counseling can have profound consequences for people in diversion programs. For instance, one of our listening session participants was mandated to participate in an additional program for an additional 180 days based on information she shared with counselors in the context of a diversion program. She told us, “They trickbagged me because I’m very vocal and just open and honest and I’m just like, ‘Let me just tell them everything.’ Then my recommendation next after that was to go to a 180-day treatment facility.” While Charmaine described her experience with drug treatment and mental health care through the diversion program as positive overall – saying, “It was the most life-changing experience that I’ve had in dealing with the judicial system. Even though it wasn’t on my own decision to go, I am glad that I didn’t have to go back to jail and that the alternative was there. ... It did allow me to finally start addressing my mental health.” – she expressed concerns about informed consent and involuntary disclosure of information shared through mandated counseling.

Peer and community-based evaluations that take a multi-layered approach to diversion program participant experiences and perspectives, placing them within the broader socio-economic context of the criminal punishment system, thus illuminate a much more complex, nuanced, and informative picture of diversion programs than evaluations focused solely on recidivism data and simplistic qualitative assessments of program outcomes.

The few studies that take this approach suggest refocusing our efforts to divert people from the criminal punishment system on ensuring access to housing, health care, income, and other supports and programs for targeted populations before, during, and beyond contact with the criminal punishment system rather than through it.

National Black Women’s Justice Institute – EMERGE Evaluation

One example of this approach to diversion and evaluation is the California-based EMERGE program and the evaluation of the program conducted by the National Black Women’s Justice Institute (NBWJI).

NBWJI supported a local organization with the conceptualization and evaluation of EMERGE (Educating, Mentoring, Empowering, and Reaffirming our Girls for Excellence), a pilot educational program for Black girls and other girls of color in Alameda County, CA, aged 16 to 18 years old. Program participants included both girls returning to school from youth detention and girls in foster care who were directly impacted by or at high risk of involvement in the criminal punishment system – in other words, it was both a diversion and a re-entry program. Black girls in both populations graduate from high school at much lower rates than their peers, in part because they are at high risk of being pushed out of and disengaging from school. The long-term impacts are significant, limiting students’ chances of graduating from high school, going on to college, securing employment, and establishing successful careers. One of

the primary goals of the program was to repair the relationship with school for Black girls and other girls of color who have been involved in the youth criminal legal or foster care systems.

EMERGE kept the experiences of Black girls and other girls of color at the center of both programming and evaluation.

Through independent study, tailored instruction, mentoring and individual case management and life coaching, EMERGE program staff and partnering organizations in Alameda County worked to ensure that girls received gender-specific and culturally affirming youth development services to support their education and employment goals. While some participants were referred by the juvenile justice system, none were mandated to attend.

When evaluating the program, NBWJI researchers collected qualitative data consisting of observations of program activities and one-on-one interviews with

students and staff over a two-year period. Interviews revealed that:

- **Nearly every student interviewed described feeling accepted and understood by the EMERGE team.** Students reported that they could express themselves without fear of judgment or consequences for honestly communicating how they felt. They also expressed feeling comfortable and relaxed at EMERGE because staff understood them and what they were going through, without requiring students to disclose all of the details of their lives.⁸²
- **Students appreciated the program's emphasis on self-determination, agency, and independence with respect to when, where, and how they learned, and being invited into some decision-making about the program,** giving them some control over the environment and an opportunity to practice leadership skills. Students also appreciated opportunities to **engage in restorative practices when harm occurred within the program environment, and to be heard when conflicts arose** around program policies such as the dress code.



By operating outside the criminal punishment and family policing systems while reaching Black girls and other girls of color at risk of further involvement in both, and by surfacing and responding to their experiences of the program in the evaluation, EMERGE kept the experiences of Black girls and other girls of color at the center of both programming and evaluation.

III. COMMUNITY-BASED VS. STATE DIVERSION PROGRAMS

There is an important distinction to be made between state-run diversion programs and community-based initiatives focused on preventing contact with the criminal punishment system by directly meeting material needs and truly diverting people from the criminal punishment system without replicating its dynamics. Programs run

by Black feminist organizations who were part of elaborating the 6Ds framework – like the National Black Women’s Justice Institute, Women With a Vision, the Solutions Not Punishment Collaborative, Women on the Rise, and the National Council for Incarcerated and Formerly Incarcerated Women and Girls – offer what, based on perspectives of Black women who have experienced or needed diversion, represents a more effective approach to diversion and preventing the harms of criminalization because they center the needs, visions, agency and self-determination of program participants.

For instance, Alana, a participant in Solutions Not Punishment Collaborative (SNaPCo)’s Taking Care of Our Own programming focused on meeting the needs of Black and trans people in Atlanta, was able to obtain housing through the program. During our listening session, Alana described SNaPCo’s program as,

very helpful quite frankly... I didn’t have anywhere else to go and they made sure that I had somewhere to go for a month to be able to get on my feet. I have to say that I’ve successfully been in the program for almost two months now. I’m currently moving into my apartment next week. It’s been a blessing to be able to have the help of someone else who you can rely on.

Because SNaPCo’s program is run by Black and trans people, participants don’t face the gender-based violence that often characterizes the programming and housing offered through conventional diversion programs, where, Alana described, “we ended up dealing with the issue of being misgendered, misplaced, and things to that effect.”

Housing programs offered through state-run diversion programs also often have restrictive rules and don’t meet individual needs around what constitutes a safe and secure home. This can lead to conflict and result in program participants being deemed “non-compliant” and pushed out of housing. For instance, Joanna, one of our listening session participants, recounted: “They put me in some kind of a house and I had to share it with somebody. They didn’t clean up after themselves and I didn’t like that. I got myself in trouble and went back to jail before I came to Women on the Rise.”

Women on the Rise (WOTR) is another Atlanta-based organization founded and led by formerly incarcerated Black women. Through its 100 Women Rising program, a partnership with Grady Hospital and the county public health program, WOTR was able to provide secure and safe housing for Joanna. 100 Women Rising supports women with unmet mental health needs who use drugs – both primary drivers of criminalization of Black women, girls, and trans people. Women on the Rise staff ensure that participants have housing, support to meet immediate needs, obtain health care, and feel safe. Once on their feet, participants are warmly invited to join the organization – as staff member Tishana puts it, “I am your case manager for the year, but after that year, and even before that year if you’re able to, you can join the organization and you have a sister for life.”



100 Women Rising doesn’t have state-imposed limits on who can participate in their programming based on whether or not a person is facing a particular kind of charge (violent vs. non-violent) or whether it is their first offense. However, it does face other program limitations based on the requirements of its institutional partners. “Unfortunately,” Tishana said during one of our listening sessions, “if you don’t have something wrong with you, you are not getting help. If you don’t have a mental health diagnosis, if you don’t do drugs, if you’re not an alcoholic, there’s nothing for you, and that’s very sad.” In other words, sometimes, even if not imposed by the criminal punishment system, access to necessary supports is mediated by another set of institutions, and comes with another set of constraints – including obtaining a mental health diagnosis

that may follow you for the rest of your life, like the fingerprints that kept Tishana from getting a job as a certified nursing assistant after going through a shoplifting diversion program – and a mandate that you then address the diagnosis in a particular way.

Women With a Vision (WWAV), a 35-year-old Black feminist harm reduction-based organization based in Louisiana, ran a diversion program they called Emerge (the court dubbed it the “Crossroads Program”) for people charged with prostitution, as documented in *Fire Dreams: Making Black Feminist Liberation in the South*. In the book, they recount how, unlike state-based diversion programs that implement mandatory drug testing and report participants for testing positive or require them to participate in anti-prostitution programming, WWAV negotiated for complete control over programming and won a concession from the court – they are not required to report participants referred to them by police or the court if they use drugs or continue to be involved in the sex trade.

Over 4 years, WWAV’s Emerge program served over 300 participants, with a 98% success rate. The program didn’t force participants to engage in counseling, groups, or any other programming. Instead, WWAV trusted participants to identify their own needs and then supported them in making their best efforts to meet them. The program kicked off with participants creating a “vision board” for themselves, and then working with program staff to make their visions for themselves a reality.

Sometimes this required creativity – when precariously housed Black women and trans people were not able to access housing unless they “proved” they were homeless, WWAV would allow them to camp in the organization’s backyard for a week so they could benefit from the city’s “Housing First” program. Where participants were undocumented and couldn’t access city housing at all, the organization partnered with a local day laborer organization to ensure that they could obtain housing in the community. Where participants’ primary work experience was in criminalized economies, they helped each other identify transferable skills without judgment or feeling like they had to leave any part of themselves behind to move forward.

In Black feminist tradition, WWAV’s Emerge program made space for Black women to come together, to create community, to share stories and experiences, and to build power together. It also engaged in Black feminist praxis of working to change the systemic conditions that contributed to the criminalization they were combating. For instance, WWAV met with residents in areas where participants were arrested for prostitution-related offenses to build support for the program and get neighbors to stop calling police. Instead, the organization, participants, and community members negotiated how to address each others’ concerns and keep each other safe.

For each of these programs, participants, rather than the priorities of the criminal punishment system, are at the center. To the extent that the community organizations that run them are connected to state institutions, they negotiate to eliminate barriers to participation, expand eligibility requirements, protect participants from surveillance and policing, and meet their needs on an individual, long-term basis. Staff offer consistent, flexible support through a harm reduction, non-judgmental lens.

As a result, community-based programs are more likely to support participants in avoiding contact with the criminal punishment system and exercising self-determination toward goals that they set rather than goals others set for them.

IV. RECOMMENDATIONS FOR FURTHER RESEARCH

Prioritize Participant Perspectives



“I always wanted to talk about this... I really appreciate being able to talk about my experience.”

– CHARMAINE, LISTENING SESSION PARTICIPANT

Current mainstream research and evaluation of diversion programs is characterized by near complete absence of program participants’ voices from the analysis. The literature is saturated with quantitative research focused almost exclusively on “recidivism” and cost reduction. In the limited number of qualitative studies conducted, researchers rely primarily on assessments by program staff, judges, law enforcement, and probation officers over participant perspectives. When participants are consulted about diversion programs, a very limited set of alternatives are explored: diversion programs, jail or prison, or nothing at all.

In order to obtain a full picture of the impacts and efficacy of diversion programs in meeting their expressed goals of keeping people out of prisons, jails, and the clutches of the criminal punishment system, researchers and funders should prioritize data collection among criminalized people through participatory and community-based

research, qualitative interviews, and listening sessions. This should include outreach to and information gathering from:

- Individuals who did not successfully complete or “graduate” from diversion programs;
- Individuals who were offered and declined diversion; and
- Individuals facing similar charges who were not offered diversion options.

The first question researchers seeking to evaluate diversion programs should ask themselves is: “What are the barriers to engaging participants of this program and how can we overcome them to ensure their perspectives guide this evaluation?”

Move Beyond Recidivism-Based Outcome Measures



What and who defines what makes a diversion program “successful”? According to the current literature, one of the most important measures of success is simply whether participants are able to successfully avoid being rearrested on the same charge, benefiting the criminal punishment system through cost savings. From a methodological standpoint, researchers generally compare the outcomes

of participation in a court-ordered diversion program to those of traditional prosecutions.

The same is true of evaluations that take participant perspectives into account. Generally speaking, studies compare mandated participation in diversion programming with experiences of incarceration. Alternatively, they compare experiences with services obtained through diversion programs with conditions under which participants have no access to supports or services at all. This sets up a dynamic in which the options for comparison are limited to one form of surveillance and control and another, or access to services through a program or no access at all. Within this framework, participants' "expressions of individual appreciation, while individually compelling and notable, also obscure the structural context...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"⁸³ in a way that respects self-determination, agency, and the opportunity to meet their full potential in an accessible and sustainable way. They also obscure whether the same or better results could have been achieved without coercive engagement with the criminal punishment system.

Traditionally, diversion program outcomes are evaluated against program goals: reducing individual likelihood of police contact or re-arrest, reducing overall arrests, criminal court case loads, and jail populations, reducing criminal punishment system costs, and, in some cases, improving outcomes for program participants. Our first premise is that participant perspectives and experiences must predominate in such assessments over criminal punishment system data and personnel.

Beyond centering participant perspectives, evaluations must move beyond re-arrest, arrest, and criminal court case numbers, and criminal punishment system costs as measures of whether a program is successfully diverting individuals from further involvement with the criminal punishment systems. They must also move beyond comparing positive outcomes reported by participants compared to incarceration and/or the complete absence of services and support, and inquire more deeply into participants' multi-faceted and subjective experiences of access to social services and supports mediated by the criminal punishment system. It is critical that conversations with diversion program participants explore what would have enabled them to avoid contact with police and the criminal punishment system – as well as foster, family regulation, and immigration detention systems – altogether.

In other words, in order to assess whether a program is truly meeting the overarching goals of diversion as envisioned in the 6Ds – preventing someone from coming into contact with the criminal punishment system – we need to assess whether programs are meeting material needs as defined by participants, without increasing (and ideally decreasing) contact or involvement with the criminal punishment system. **For instance, does the program simply make quality housing, mental health care, drug treatment, counseling, education, and living wage income available to everyone on a voluntary, consensual, non-coercive, accessible, long-term, sustainable basis without the necessity of contact with or further engagement with the criminal punishment system? Are participants avoiding criminalization through participation?**

Taking this approach would also ensure that research and evaluation of diversion programs would surface the harms of criminalization, as well as of the increased reach of surveillance, policing, and punishment and the lengthened

engagement with the criminal punishment system that many diversion programs involve. This approach would also test the popular perceptions that the threat of punishment is necessary to motivate participants to make positive changes in their lives – or that any kind of change is necessary.

Instead of approaching analysis of diversion programs by focusing on criminal punishment system priorities such as reduced recidivism, **we would better understand the effectiveness of diversion from the criminal punishment systems if research and evaluation focused on:**

- **The needs and material conditions that contributed to program participants' criminalization and contact with the criminal punishment system;**
- **Whether diversion programs meet those needs and shift the conditions participants identified;**
- **Whether and how these needs and material conditions could be better and more widely met without arrest and diversion serving as the “gateway” to services;**
- **Whether diversion programs increase or reduce violence (including state violence) in the lives of participants;**
- **The impacts of eligibility requirements, program restrictions, and quality and availability of services; and**
- **Whether decriminalization would more effectively reduce the harms of the criminal punishment system.**

In other words, research and diversion program evaluation should **focus on how participants would define a successful diversion intervention, through responses to questions such as:**

- **What would have prevented you from coming into contact with the criminal punishment system?**
- **Did diversion change the things in your life that brought you into the criminal legal system in the first place?**
- **Did the program provide you with the support you needed for your safety and well-being?**
- **What were your goals going into the program?**
 - **Were you able to achieve them?**
 - **Did the program improve your overall quality of life?**
 - Did the program reduce the presence of violence and harm in your life?
 - Did the program increase your opportunities to engage in life-giving activities?
- **Could those goals have been achieved without a diversion program? How?**
- **How would you define success?**
 - **How would your family, loved ones, and communities define success?**

Starting from the perspective, experiences, and dreams of people targeted for criminalization is the most effective way to assess what is needed to ensure that they don't come into contact with the criminal punishment system in the first place, or, failing that, are diverted from it at the earliest opportunity.

V. RECOMMENDATIONS FOR POLICYMAKERS AND PROGRAMS

“I’ve never been asked to evaluate [a diversion program] because they have a set structure that comes down from the government, ‘These are the classes you have to take,’ whether you need those classes or not. It’s no wavering from that. I think that’s totally unfair because I don’t have an anger problem, but I had to take anger management classes. I have a drug problem. They mandated me to do that but then, even in that, they didn’t teach you about the addiction of it, the disease part of it. I’ve never been asked to do an evaluation, but if I had been, they probably wouldn’t like my answers.”

– VERONICA, LISTENING SESSION PARTICIPANT

Diversion program participant perspectives and experiences serve as a rich source of information about effective diversion strategies and means of preventing contact with the criminal punishment system. As an initial matter, policy makers should prioritize resources to meet material needs such as health care, housing, and income supports, and to create low-threshold, harm reduction-based, voluntary, quality, and widely accessible supports and services unmediated by the criminal punishment system. These programs should offer individualized, non-judgmental

or non-coercive supports rooted in and accountable to participant needs and visions.

The participant perspectives we distilled from existing research and our listening sessions offer **the following guideposts** for policymakers and programs working to reduce incarceration and the harms of criminalization:

→ **Ensure accountability mechanisms that transparently and independently gather and act on participant perspectives and experiences.**

Mechanisms must be put in place to gather feedback from diversion participants using a multitude of accessible modalities that gather information focused on the questions identified in the previous section.

For instance, 100 Women on the Rise uses participant surveys to gather feedback on their experiences of the program. Melody, a program staff person, offered an example of how this approach allows for improvements in real time:

Ms. Veronica was one of my first clients. She gave me a survey she completed and she was saying, “I don’t feel like I’m listened to.” That helped me to be able to say, “What am I

doing wrong?” She said, “I need a therapist.” I was like, “Thank you. That’s what I need because sometimes I’m running and trying to get through the whole script and everything I need to get done, and I need you to help bring me down to where I need to be, to how I can better serve you and help you.”

As Alana put it, programs need to be evaluated by and accountable to “the same person who’s actually going through the diversion program so they can see what improvements can be measured and what they possibly shouldn’t or should reevaluate so the success rate moves along.”

Charmaine, a Black trans woman, felt similarly:

We are the experts in dealing with what we are going through. We do differ from most other gender demographics and people really don’t know how to deal with us. ... Give us the chance to also evaluate our experience and to learn. You put me in here, how did it work out for me? Me saying, okay, well, this is my experience, this is where you can always be different, this is what worked out, this is what was difficult, take this information and put it together. That’s not just for trans people, that’s for all demographics. Y’all collecting data so let me give you something about how it worked out for me, not based upon your opinion or your evaluation or what you came to or whatever you put in the algorithm that you decided – I am the actual human being, and this is my experience. Let me help you with talking about what helped or what you all could have did differently or better in dealing with me.

Michaelisa echoed Charmaine’s vision of diversion evaluation: “It should be the trans women who have successfully completed the program to go back, to reach back out to people doing the program now.”

Imani emphasized that evaluations need to follow up with participants beyond the moment they complete the program:

A lot of these programs think that they’re getting across a lot of people numbers-wise, but mentally, physically, and emotionally, you still have people that are relapsing, that are coming back homeless, that are still going through struggles. Maybe a person was good in that moment when they completed a program, but it’s still next week, next year, next month. You don’t know where that person is mentally.

This can be accomplished by following up with participants at regular intervals for a period of years, or setting longitudinal time frames for formal evaluation studies.

Imani also noted that it’s not enough to ask for participant perspectives, you have to act on them:

A lot of times people don’t really read surveys or listen to the feedback of surveys or even reviews. I think that that will play a big factor in it because a lot of times what’s being said in surveys are very helpful, but it’s looked past like a grievance. Then you don’t get the bigger picture and the bigger understanding of what people are going through. My story with Women on the Rise, and I’m using them as an example because I’m in this program now, can be different from another person’s point of view of Women on the Rise. Being able to take everybody’s individual feedback and be able to build off of that can give you insight.

Sonia echoed these concerns and recommendations, saying, “There should be a panel of people who have been through the program, but really just making sure that there’s many ways to give feedback and that it’s going to be heard and listened to and acted on.”

→ **Prioritize access to services and supports before criminal legal system involvement.**

“Make training and resources for supportive adults – teachers, community members, first responders – readily available to support young people experiencing violence and family drug use to connect the family to support. It is important that accessing these services not result in contact with any policing agency, including child protective services agencies. To be most effective, these trained individuals must view access to this program as a pre-diversion program in lieu of making an arrest, detaining someone, or making a referral to any state agency.”

– MEMBER, NATIONAL COUNCIL FOR INCARCERATED AND FORMERLY INCARCERATED WOMEN AND GIRLS

→ **Ensure that participants are provided with clear information about program offerings and requirements, and the opportunity for informed consent to participation.**

“Be more clear about the expectations. Be clear about the full expectation. Don’t try to throw us a curveball.”

– CHARMAINE, LISTENING SESSION PARTICIPANT

“I think being transparent about your fingers being printed and how it can affect you when you’re trying to get into programs is important. I feel like a lot of these programs, they need to be transparent with the clients about what they’re actually going to receive and help them to understand the consequences of participating in the program.”

– TISHANA, LISTENING SESSION PARTICIPANT AND STAFF PERSON AT WOMEN ON THE RISE DIVERSION PROGRAM

→ **Ensure voluntary participation.**

As noted by researchers from Yale and the Sex Workers Project, while some program participants appreciated structure, most participants described coercion as counterproductive, and harm reduction-based, voluntary programs as welcoming and affirming.⁸⁴ According to their research, “One of the most often-repeated emphases of almost all the defendants/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.”⁸⁵

“Therapy has to be based on a relationship of trust. The confidentiality piece I think keeps a lot of people from wanting to go and also being mandated doesn’t really help. You have to want to talk to someone. You have to want to do therapy. Even when you’re doing therapy that you want to do, often we resist because we’ve learned how to survive and surviving means keeping it all in, keeping it tight, keeping it organized and so to be willing to do it, it’s not something you can be forced to do and I think that’s the same for rehab. You can’t be forced to do something. You have to be ready to come to it as Ms. Veronica was saying. The same is true for therapy, so this mandated business doesn’t work. It’s not the right way of making sure people have access to what they need, I think is what I’ve heard from people.”

– LISTENING SESSION PARTICIPANT

→ **Ensure consistent access to supportive, individualized, non-judgmental care focused on building relationships and communities of care and support.**

“[The service provider] never changed. She was that one constant thing in my 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.”⁸⁶

“Before I was in the program, I didn’t care if I died or not, you know. I was pretty much hopeless. But now I have someone working close with me. Taking baby steps. It’s a lot better.”⁸⁷

“When I was with [a diversion program connected to the state], I let them know that I didn’t have a phone and I wouldn’t be able to contact them, but I did let them know where I was located and where I was homeless. They didn’t follow up ... but Ms. King [the 100 Women Rising worker], she came exactly where I was at, and she was there no matter where I was at. As long as she had a location, she knew where to find me and where to come get me. It was more of a follow-through thing.”

– IMANI, LISTENING SESSION PARTICIPANT

“Women on the Rise has aided with that because I’ve got a lot of positive reinforcement and encouragement I haven’t even got from my own family members....I didn’t have any clothes that fit, and thanks to Tishana, Women on the Rise, I was able to get some decent clothing. They gave me a MARTA card to get back and forth to work and go to appointments and interviews and took me grocery shopping. I didn’t have much

food and [they] gave me a laptop so I can sign up for school. Nobody never gave me no tools like that to help me.”

– NIKITA, LISTENING SESSION PARTICIPANT

*“They tell you all this good stuff, and nobody follows up. When I was released, Melody called me. It really shocked me that they were true to their word. They helped me get a MARTA card, they gave me food. Now I’m dealing with someone else Her name is Shareel and she calls me at least twice a week. She comes out to my home on Wednesdays and visits me. It’s like we’re establishing a relationship. For me, I’ve never had any healthy relationships with women because, as I said, I’m a recovering addict, so it was either you get me or I hit you. **It’s just a great thing to know that I have some healthy women that I could go to if I need some help.”***

– VERONICA, LISTENING SESSION PARTICIPANT

→ **Support participants in accessing the care and support they need and want.**

Both research studies and listening session participants reported that they were often mandated to seek out and participate in services that didn’t exist or didn’t have capacity to serve them within time frames imposed by the court. Often, they didn’t have the resources, time or support (including childcare) to find or participate in programming required by diversion programs.

“They didn’t want to give me no counseling, but they told me to go out there and get the counseling myself, and I didn’t know where to look. They should’ve helped me get that stuff situated ...”

– JOANNA, LISTENING SESSION PARTICIPANT

→ **Ensure access to safe, accessible, and affirming housing, without conditions.**

“All of these [housing services offered through diversion program] are no-nonsense, and have no tolerance for active addiction. In between court dates, you still have the same neighborhood, you still have the same people in your life. Just because the court wants me to stop doing it, that doesn’t mean everybody else is going to stop doing it. That was the hardest part because change is very difficult sometimes, especially when you go kicking and screaming. It was hard. I think that was the hard part for me.”

– MICHAELISA, LISTENING SESSION PARTICIPANT

“When they are offering a housing component, it is always a housing system that is based on people being sober. I know that was one thing that I always balked at because I’m a grown-up. Y’all need to let me be grown. Pushing me to abstinence was not working for me because I only had a problem with crack cocaine. I can successfully smoke marijuana and smoke weed without breaking out all over town doing ungodly things. Forcing me to quit everything to suit their needs didn’t work for me. I felt like there should also be housing supportive to people that still use. Even if they are in active addiction. They need to understand that everybody does not have an addiction or addictive behaviors.”

– TAMIKA, LISTENING SESSION PARTICIPANT

→ **Move away from “one-size-fits all” approaches and toward resourcing community-based organizations to provide individualized, community-based care.**

“It really needs to be tailored to the individual. What I do like about our program is that everybody’s treatment plan is different. ... Now, I will say that we do have the basics like making sure, of course, that you’re not unsheltered, making sure that you do have your medication. Those are the basics of it, but when it comes to the quality of life, what everybody else needs is different. ... Nikita may not have an issue with being unsheltered, but she may have anger and the anger may stem from when she dealt with her trauma. She may need a grief counselor, she may need to go to some meetings. Maybe she did try a grief meeting. Maybe that wasn’t a good meeting for her. Me, as her case manager, I am supposed to speak with her and ask her, ‘Okay, what is not working? What is working?’ so that she’s not angry and in a position where she is likely to be arrested again. ... It needs to be fine-tailored. I would say where our organization, with what we’re doing, it is really tailored to the individual. It’s not just textbook.”

– TISHANA, LISTENING SESSION PARTICIPANT AND 100 WOMEN ON THE RISE STAFF PERSON

→ **Tackle root causes.**

“Nobody tried to get to the root cause of why I did what I did. ... People don’t just wake up one morning and say ‘I’m going to commit a crime, I’m going to murder somebody.’ There is a reason why people do what they do. Once you get to the why, it’s easy to work around the accountability.”

– ANGELA, MEMBER, NATIONAL COUNCIL FOR INCARCERATED AND FORMERLY INCARCERATED WOMEN

“What would have been helpful is to get down to the deep root on stealing, like ‘why are you stealing?’...I feel like it would have been nice to dig deep, especially being a young person, finding out why was that a thing for me. I think that that would have actually helped me. ... I know there were shoplifting classes, and you got a certificate for completing it. I’m pretty sure it was talking about not stealing, like, why you don’t steal, but it was not at all about the deep root cause and why did you feel like you needed to. I was a troubled teen. I would have needed that therapy. It wasn’t that. It was just basically like the law on stealing, why you don’t steal, and then you receive a certificate at the end and that’s it. No follow-up.”

– TISHANA, LISTENING SESSION PARTICIPANT

“If I had been taught about the disease that I had, I would have been able to get to the root of my problem. When I would go to these diversion centers, you do six months and they let you out as long as you pay the probation fees. There was nothing implemented that could help me learn about the disease that I had, so I just continued to do the same thing. I really believe that people should be educated about the disease of addiction, instead of making the person feel that they’re a bad person or they’re doing bad things, it’s a disease and it has to be treated as such.”

– VERONICA, LISTENING SESSION PARTICIPANT

“At the time I needed somebody to talk to, because I was homeless, but I was surviving. ... A lot of times I was getting locked up because I’m a fighter, so I was fighting for survival, not fighting just because I wanted to fight. Some days I was tired, I was exhausted, but it was either fight somebody off or have to be in a circumstance that I

didn’t want to be in. ... I was telling them, ‘You can lock me up, but I’m still going to have to get out of jail, deal with the same thing, and I’m going to be back.’ ... I needed somebody to talk to and I needed resources.”

– IMANI, LISTENING SESSION PARTICIPANT

“For me, it was my mother didn’t accept me as a homosexual woman and I started running away from home and got caught up in the street life. I had to understand why I would get angry so easily, help me understand why I was going through what I was going through, understand my emotions.”

– J, MEMBER, NATIONAL COUNCIL FOR INCARCERATED AND FORMERLY INCARCERATED WOMEN

“One of the girls, she kept coming back for stealing. She did 16 months for stealing and got out in January and went right back in February for stealing. If she could say, ‘this is what I’m lacking in my household, help me with this so I don’t end up stealing again and go back to jail’. ... This one lady, she got locked up because she stole some meat to feed her kids out of Walmart. She probably stole like maybe \$15 worth of food and her bond is \$300 and she’s been sitting months and can’t even pay it. That’s months that her kids are motherless because she just stole some damn chicken thighs and drummies to try to feed them.”

– NIKITA, LISTENING SESSION PARTICIPANT

“I didn’t need prison, I needed help. ... Trauma, domestic violence, children taken away ... Violence between parents led to needing to take care of siblings through shoplifting. ... I was broken.”

– MEMBER, NATIONAL COUNCIL FOR INCARCERATED AND FORMERLY INCARCERATED WOMEN

*“If they had looked into root causes of my theft instead of the criminalization ... the immediate response was, let’s lock them up because they broke the law, not **why** did they break the law.”*

– DELORES, MEMBER, NATIONAL COUNCIL FOR INCARCERATED AND FORMERLY INCARCERATED WOMEN

*“Instead of punishment, there should have been someone who believed us, cared for us, and offered a safe place to talk about issues we were facing. **We needed proper intervention when our behavior indicated we were suffering. As a community, we need to ensure that there is mental health support for families in crisis or going through divorce, separation, migration, sexual violence, and trauma.**”*

– MEMBER, NATIONAL COUNCIL FOR INCARCERATED AND FORMERLY INCARCERATED WOMEN

→ **Ensure access to programs that are specifically responsive to the needs of women, girls, and trans people.**

*“The state of Georgia, they don’t have resources for women. It is very scarce for women to be able to get the programs, for women to be able to get housing, for women to be able to get jobs. ... **It’s a lot of people that really want help and it’s not a lot of resources. A lot of homeless shelters have been shut down. A lot of places for the women were shut down first before the men. ... It was no resources at the time when everything was happening to me.**”*

– IMANI, LISTENING SESSION PARTICIPANT

→ **Eliminate exclusions and other barriers to accessing diversion programs.**

*“Often these diversion programs are only available for non-violent offenses, and as someone who spent time on the street, I was like, ‘It’s 24 hours on the street before you have done something “violent” because you have to, like you say, defend yourself.’ **A lot of those non-violent diversion programs aren’t useful for most of us – particularly, I think, for women and girls and trans folks because there’s more to defend ourselves from. Then we end up being excluded from those programs because we’re trying to survive – fighting to survive, like you say.**”*

– LISTENING SESSION PARTICIPANT

→ **Eliminate diversion program fees and other barriers.**

“At the time what I needed was someone to talk to. I was put in a program, like anger management program for 12 weeks, but it wasn’t free. I had to pay for it, I think it was like \$65 a week. I wish that was free because actually that program, it was good ... but I didn’t appreciate that I had to come out of pocket just being out jail having a hard time trying to get back on my feet.”

– SHADAY, LISTENING SESSION PARTICIPANT

“My clients, they have anger management that they have to pay for, so it’s always a fee. Anything with anger management, anything that’s a class that’s going to give you some type of certification or saying that you completed it, it’s not free. Even the parenting classes, if you need that, which is not free...”

– TISHANA, LISTENING SESSION PARTICIPANT AND 100 WOMEN RISING CASE MANAGER

“They’re making you pay stuff you’re going to be back because where are you going to get the money? You’re going to end up having to do something that’s criminalized to get the money if you can’t get a job. I’m going to have to do something to get that money that is going to maybe get me in more trouble, so it’s just a cycle, a washing machine that they have you in when they’re making you pay like that.”

– LISTENING SESSION PARTICIPANT

→ **Respect individual autonomy, self-determination, agency, and dignity.**

Above all, centering the experiences of diversion program participants means designing programs to meet people where they are with love and not discipline, punishment, or stigma.

“I don’t like nobody talking to me like I’m a kid or something like that. I know I’m grown and I want to be talked to like I’m a grownup. ... I have to have people around me that can talk to me for me being me.”

– JOANNA, LISTENING SESSION PARTICIPANT

“A lot of times, people talk at you and don’t talk to you. I feel like, since I’ve been in Women on the Rise, literally everything I’ve been praying for as far as somebody seeing me for me and not my mental health diagnosis or not my criminal background, it means a lot.”

– IMANI, LISTENING SESSION PARTICIPANT

“I think that people that’s actually going through whatever they’re going through should be the ones who actually has to evaluate [diversion programs] and say what is helpful for them, not the court deciding what is it that you’re needing or what they think that you need. I feel like you should be the one to be able to make that decision. You should be

the one to say, ‘I feel like I need to go to anger management,’ or ‘I feel like I need to go to therapy, drug counseling, or whatever.’”

– SHADAY, LISTENING SESSION PARTICIPANT

→ **Create Communities of Care.**

“People are searching for a place of belonging.”

– STACEY, MEMBER, NATIONAL COUNCIL FOR INCARCERATED AND FORMERLY INCARCERATED WOMEN AND GIRLS

As part of their Reimagining Communities campaign, members of the National Council for Incarcerated and Formerly Incarcerated Women and Girls are dreaming and building what it would take to create communities built around care, not criminalization. **Such communities would include:**

- Respite centers for pregnant people, parents, and children;
- Safe spaces in communities where people who experience harm can go without judgment, where they can trust that they will be believed and cared for, where they can seek restorative justice and accountability without punishment;
- Mentorship programs;
- Safe places in communities to talk about what is happening at home, and to build skills for navigating family conflict and intergenerational harm, supporting children, challenging and unlearning toxic masculinity, building healthy sexuality rooted in consent, and engaging in violence prevention;
- Truce and conflict mediation centers; and
- Healing, grief, and trauma support circles.

“So what I’m thinking in my head is a community-based organization that will respond to individuals that have been hurt in a community by a community member and going into these spaces with reconciliation, acknowledgement, and having to be confronted with it, that they’ve been an abuser. Some kind of restitution, some kind of dialogue. This is what happened, we believe the person, the child, we believe this person and this is what needs to be done. ... It has to be more than just the confronting of the abuse. It has to be intervention for both parties.”

– ROSLYN, MEMBER, NATIONAL COUNCIL FOR INCARCERATED AND FORMERLY INCARCERATED WOMEN AND GIRLS.

“We need housing that we can afford, not someone else’s definition of ‘affordable housing.’ We need safe, stable, accessible, quality housing. We want to have a seat at the negotiating table of these management and development companies that infiltrate our communities, so that we can remain in the communities and feel good and proud of them. We want spaces to provide community services and to reclaim our lands and property and reimagine spaces for healing, such as playgrounds, hydroponic vegetable gardens, centers for children and families with readily available resources, co-op and condo housing.”

– MEMBER, NATIONAL COUNCIL FOR INCARCERATED AND FORMERLY INCARCERATED WOMEN AND GIRLS

Moving Toward Genuine Diversion

Within the 6Ds framework, the goals of diversion programs should be:

- **To remove people from the criminal legal system at the earliest opportunity**, ideally before police contact, violence, arrest, or charging, as well as the collateral consequences of arrest or charging, including deportation, institutionalization, violation of probation or parole, family surveillance and separation, and adverse impacts on employment, housing, education, and licensing.
- **To avoid mandatory treatment, fees, fines, or community service, imposition of program views or values**, whether they be faith-based, anti-prostitution, homophobic, transphobic, or otherwise oppressive, as well as increased surveillance and net-widening effects of diversion programs;
- **To avoid deferred or harsher criminalization** should participants be unable to complete diversion programs;
- **To identify and meet participant needs** and transform the conditions driving people into contact with the criminal legal system; and
- **To promote harm reduction, agency, self-determination, leadership development, economic sustainability, and communities of care.**

It is important to avoid:

1. Increasing the power of police and prosecutors, including by:

- Situating power to divert in the hands of police and prosecutors, providing them with more discretion and power to surveil, control, discriminate against, and exclude people from programs, or to engage in extortion in exchange of referral to a diversion program;
- Widening the reach of policing and punishing institutions under the guise of offering “help” even when there is no legal basis for criminal legal action (net widening), thereby contributing to increased punishment and control of criminalized populations; and
- Enhancing legitimacy and increasing funding to police, prosecutors, courts, and other systems of policing and punishment.

2. Conscripting community programs to carceral systems, including by:

- Requiring social and community-based programs to carry out criminal punishment system mandates to surveil, police, and punish participants.

3. Setting diversion program participants up for failure and increased criminalization in the long term, including by:

- Creating mandates that are impossible for people to meet such as immediate and full abstinence, program attendance during work or after-school hours, conflicting requirements, and failing to offer childcare, transportation, or other supports to participation;
- Forcing people into programs they don't need such as “anger management,” parenting classes, and drug treatment and counseling instead of directly addressing the individual conditions that contributed to contact with the criminal legal system;

- Failing to competently serve specific communities, including women, pregnant and parenting people, LGBTQ people, disabled people, migrants and undocumented people, non-English speaking, non-Christian, etc., increasing these communities' exposure to criminalization and increased punishment;
- Failing to allocate sufficient resources to community-based programs to provide individualized, long-term care;
- Excluding offenses responsible for a significant proportion of women and queer and trans people's incarceration, including theft, fraud, assault, and other “violent” offenses; and
- Transferring the cost of programs onto participants through fees, fines, and surcharges.

As we work toward genuine diversion from the criminal punishment system, it is also critical to keep all of the 6Ds in view, and to not allow a focus on diversion to eclipse our efforts to decriminalize and decarcerate, to divest from and dismantle systems of punishment, and to dream and enact transformative ways of preventing, interrupting, and healing from harm, conflict, and need.

“I need to make sure that people have a clear understanding that I'm not in favor of diversion programs. I honestly feel like they shouldn't exist. For a lot of the low-level crimes that they are placing people in the diversion programs for, they may as well just stop arresting people for them. That is just my personal feeling about that. I am an abolitionist by heart, so I feel like a lot of the ways that the criminal justice system and the policing systems work should not exist.”

– TAMIKA SPELLMAN, LISTENING SESSION PARTICIPANT

KEY QUESTIONS TO CONSIDER FOR STRATEGIES TO DIVERT PEOPLE AWAY FROM THE CRIMINAL PUNISHMENT SYSTEM



Does the strategy produce a positive material change in the lives of participants?



That, to me, is what diversion should be. **It should be something that we're being diverted to rather than just something we're being diverted from. You have to have something on the other side that we should be looking for as the reward for our effort.** That's not what happens all the time. There's nothing on the other side of this diversion. What am I being diverted to? That's what 'divert' is, to be diverted from, to something.

– TAMIKA, LISTENING SESSION PARTICIPANT



Does it (as a whole or in part) legitimize or expand criminalizing logics, institutions, or systems?



Does it benefit parts of the criminal punishment system, industries that profit from it, or elected officials who sustain it?



Does the strategy preserve the existing power relations of the system? Who makes the decisions about how the program will be implemented and the mandates enforced?



Does it create division between “deserving” and “undeserving” people? Does it leave out especially marginalized groups (people with criminal records, parents, women, queer, trans, or undocumented people, etc.)?

CONCLUSION



Taking a Black feminist approach to diversion points us toward creating supportive rather than punitive environments in communities and institutions, meeting individual needs without the necessity of contact with the criminal punishment system, and ensuring that program participants have opportunities to express themselves, shape diversion programming, and exercise agency and self-determination in identifying and achieving their goals.

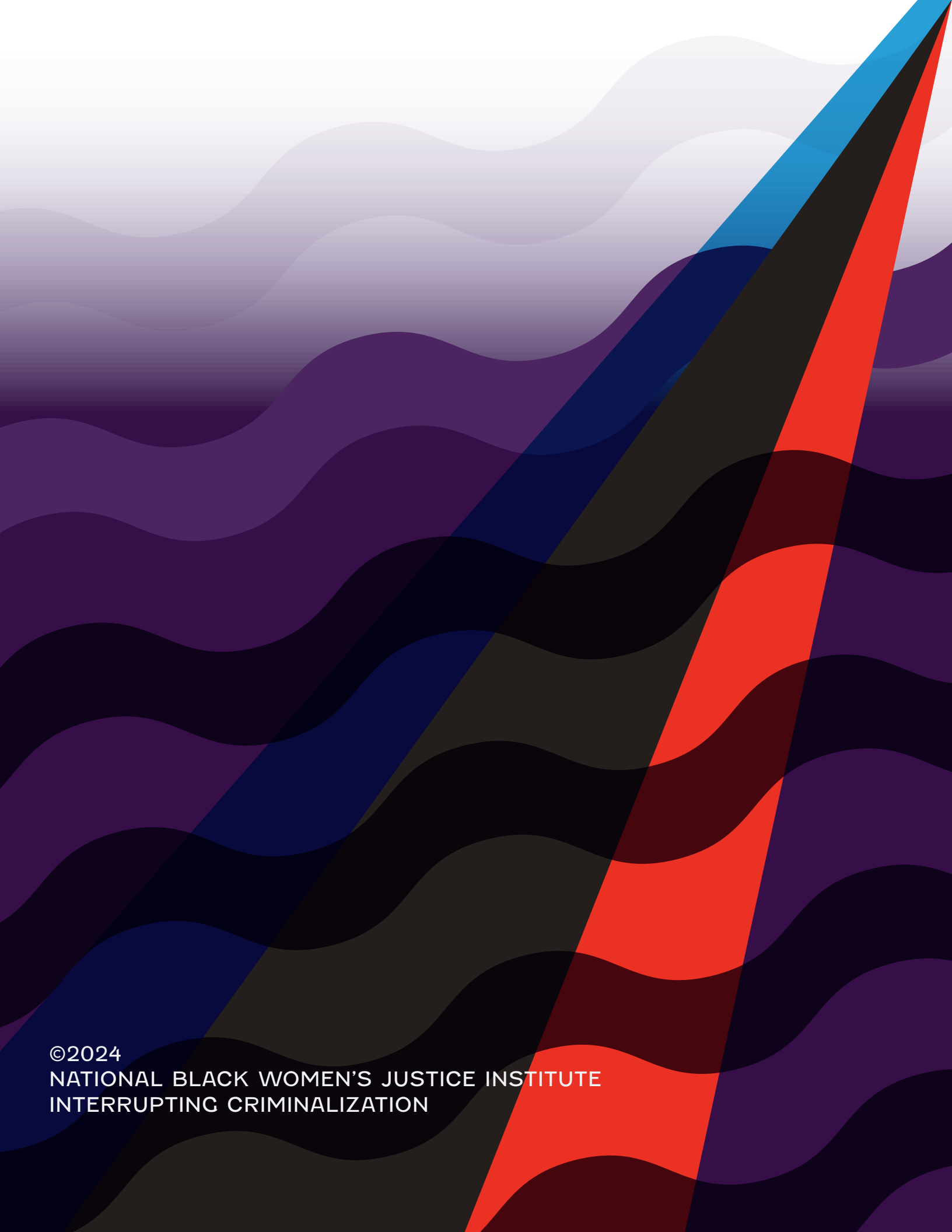
ENDNOTES

1. Wendy Sawyer and Peter Wagner, “Mass Incarceration: The Whole Pie,” Prison Policy Initiative (March 2023), available at: https://www.prisonpolicy.org/factsheets/pie2023_allimages.pdf.
2. Alex Kajstura and Wendy Sawyer, “Women’s Mass Incarceration: The Whole Pie 2023,” (March 2023), available at: <https://www.prisonpolicy.org/reports/pie2023women.html> (“Women’s incarceration has grown at twice the pace of men’s incarceration in recent decades, and has disproportionately been located in local jails.”); Wendy Sawyer and Peter Wagner, “Mass Incarceration: The Whole Pie,” Prison Policy Initiative (March 2023), available at: https://www.prisonpolicy.org/factsheets/pie2023_allimages.pdf.
3. “What’s Driving Criminalization of Women and Trans People in the United States?” Interrupting Criminalization (2019), available at: <https://static1.squarespace.com/static/5ee39ec764dbd7179cf1243c/t/6284674759adec13bc9153bc/1652844361503/Driving+Criminalization.pdf>
4. “What’s Driving Criminalization of Women and Trans People in the United States?” Interrupting Criminalization (2019), available at: <https://static1.squarespace.com/static/5ee39ec764dbd7179cf1243c/t/6284674759adec13bc9153bc/1652844361503/Driving+Criminalization.pdf>
5. “What’s Driving Criminalization of Women and Trans People in the United States?” Interrupting Criminalization (2019), available at: <https://static1.squarespace.com/static/5ee39ec764dbd7179cf1243c/t/6284674759adec13bc9153bc/1652844361503/Driving+Criminalization.pdf>
6. “What’s Driving Criminalization of Women and Trans People in the United States?” Interrupting Criminalization (2019), available at: <https://static1.squarespace.com/static/5ee39ec764dbd7179cf1243c/t/6284674759adec13bc9153bc/1652844361503/Driving+Criminalization.pdf>
7. “What’s Driving Criminalization of Women and Trans People in the United States?” Interrupting Criminalization (2019), available at: <https://static1.squarespace.com/static/5ee39ec764dbd7179cf1243c/t/6284674759adec13bc9153bc/1652844361503/Driving+Criminalization.pdf>
8. Participating organizations included: the Advancement Project; Black Alliance for Just Immigration; Black LGBTQ Migrant Project; BYP100; California Coalition for Women Prisoners; Center for Social Justice at Columbia School of Social Work; Color of Change; Decrim NY; Decrim NOW; Drug Policy Alliance. If/When/How Lawyering for Reproductive Justice; Interrupting Criminalization; Movement for Family Power; National Black Women’s Justice Institute; National Council for Incarcerated and Formerly Incarcerated Women and Girls; National Bailout; Prison Policy Institute; REFRAME Health and Justice; Sistersong; Solutions Not Punishment Collaborative; Survived & Punished NY; Survived & Punished California; Transgender Intersex Justice Project; Women on the Rise; Women With a Vision; Young Women’s Freedom Center.
9. “6Ds Until She’s Free,” Interrupting Criminalization, 2020, available at: https://www.youtube.com/watch?v=qwwj3iH_UlM&ab_channel=SensitiveVisual
10. Bellasai, J. (2010). A short history of the pretrial diversion of adult defendants from traditional criminal justice processing, Part one: The early years. National Association of Pretrial Service Agencies; NeMoyer, A., Gale-Bentz, E., Goldstein, N. E., & Pema Harvey, L. (2020). Factors Associated With Successful Completion of a Community-Based, Postarrest Juvenile Diversion Program and Subsequent Rearrest. *Crime & Delinquency*, 66(5), 603-626.
11. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
12. For more information on the stages of a criminal prosecution, please visit beyondcourts.org, “Criminal Courts 101,” at <https://beyondcourts.org/en/story>.
13. Evan Anderson, Ruth Shefner, Rebecca Koppel, Cariné Megerian, and Rosemary Frasso, “Experiences with the Philadelphia police assisted diversion program: A qualitative study,” *International Journal of Drug Policy*, 100 (2022).
14. Evan Anderson, Ruth Shefner, Rebecca Koppel, Cariné Megerian, and Rosemary Frasso, “Experiences with the Philadelphia police assisted diversion program: A qualitative study,” *International Journal of Drug Policy*, 100 (2022).
15. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018. For more information about the LEAD model, please visit <https://leadbureau.org/>.
16. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018. For more information about the LEAD model, please visit <https://leadbureau.org/>.
17. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
18. Meredith Dank, Lilly Yu, Jennifer Yahner, Elizabeth Pelletier, Mitchyll Mora, Brendan Conner, “Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YSWW Who Engage in Survival Sex,” Urban Institute, 2015, available at: <https://www.urban.org/research/publication/locked-interactions-criminal-justice-and-child-welfare-systems-lgbtq-youth-ymsm-and-ysww-who-engage-survival-sex>.
19. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
20. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
21. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
22. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.

23. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
24. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
25. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
26. For descriptions of several forms of Diversion Programs, see: <https://www.justice.gov/usao-dc/diversion-programs>
27. Aya Gruber, Amy J. Cohen, and Kate Mogulescu, Penal Welfare and the New Human Trafficking Intervention Courts, 68 Fla. L. Rev. 1333 (2016). Available at: <http://scholarship.law.ufl.edu/flr/vol68/iss5/3>.
28. *Un-Meetable Promises: Rhetoric and Reality in New York City's Human Trafficking Intervention Courts*, A report by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in collaboration with The Sex Workers Project of the Urban Justice Center, September 2018.
29. Victoria Law and Maya Schenwar, *Prison By Any Other Name: The Harmful Consequences of Popular Reforms*, New York: The New Press (2020).
30. Meredith Dank, Lilly Yu, Jennifer Yahner, Elizabeth Pelletier, Mitchyll Mora, Brendan Conner, "Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YSWW Who Engage in Survival Sex," Urban Institute, 2015, available at: <https://www.urban.org/research/publication/locked-interactions-criminal-justice-and-child-welfare-systems-lgbtq-youth-ymsm-and-ysww-who-engage-survival-sex>.
31. Rachel Foran and Eli Hadley, *Problem Creating Courts*, Community Justice Exchange, 2022, available at https://beyondcourts.org/sites/default/files/2022-07/ProblemCreatingCourts_7.25.22.pdf.
32. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
33. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
34. Rachel Foran and Eli Hadley, *Problem Creating Courts*, Community Justice Exchange, 2022, available at https://beyondcourts.org/sites/default/files/2022-07/ProblemCreatingCourts_7.25.22.pdf.
35. Meredith Dank, Lilly Yu, Jennifer Yahner, Elizabeth Pelletier, Mitchyll Mora, Brendan Conner, "Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YSWW Who Engage in Survival Sex," Urban Institute, 2015, available at: <https://www.urban.org/research/publication/locked-interactions-criminal-justice-and-child-welfare-systems-lgbtq-youth-ymsm-and-ysww-who-engage-survival-sex>.
36. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
37. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
38. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
39. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
40. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
41. Collins, Erin, *The Problem of Problem-Solving Courts* (November 22, 2019). UC Davis Law Review, Vol. 54, No. 1573, 2021, Available at SSRN: <https://ssrn.com/abstract=3492003> or <http://dx.doi.org/10.2139/ssrn.3492003>
42. Rachel Foran and Eli Hadley, *Problem Creating Courts*, Community Justice Exchange, 2022, available at https://beyondcourts.org/sites/default/files/2022-07/ProblemCreatingCourts_7.25.22.pdf.
43. Rachel Foran and Eli Hadley, *Problem Creating Courts*, Community Justice Exchange, 2022, available at https://beyondcourts.org/sites/default/files/2022-07/ProblemCreatingCourts_7.25.22.pdf.
44. For more information on diversion programs and "problem solving" courts, please visit Community Justice Exchange's Problem Creating Courts explainer, available at https://beyondcourts.org/sites/default/files/2022-07/ProblemCreatingCourts_7.25.22.pdf, as well as the Prison Policy Institute's 2021 report *Building exits off the highway to mass incarceration: Diversion programs explained*, available at: <https://www.prisonpolicy.org/reports/diversion.html>.
45. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
46. See, e.g. Katherine Beckett, Allison Goldberg, and Marco Brydolf-Horwitz, "Justcare: An Analysis Of Housing And Other Outcomes," University of Washington, January 17, 2023, available at: https://leadbureau.org/wp-content/uploads/2023/08/JustCARE-Outcome-Evaluation_1.-17-23.pdf; Report to Albany on the LEAD program: *One-Year Anniversary*, April 1, 2016 – March 31, 2017; Seema L. Clifasefi, Heather S. Lonczak, Susan E. Collins, "LEAD Program Evaluation: The Impact of LEAD on Housing, Employment and Income/Benefits," Harm Reduction Research and Treatment Center, University of Washington Harborview Medical Center, March 31, 2016; and other evaluations of Seattle's LEAD found at <https://leadbureau.org/toolkit/resources/>.
47. Lindquist-Grantz, R., Mallow, P., Dean, L., Lydenberg, M., & Chubinski, J. (2021). Diversion programs for individuals who use substances: A review of the literature. *Journal of Drug Issues*, 51(3), 483-503.

48. See, e.g. Katherine Beckett, Allison Goldberg, and Marco Brydolf-Horwitz, "Justcare: An Analysis Of Housing And Other Outcomes," University of Washington, January 17, 2023, available at: https://leadbureau.org/wp-content/uploads/2023/08/JustCARE-Outcome-Evaluation_1-17-23.pdf; Report to Albany on the LEAD program: One-Year Anniversary, April 1, 2016 – March 31, 2017; Seema L. Clifasefi, Heather S. Lonczak, Susan E. Collins, "LEAD Program Evaluation: The Impact of LEAD on Housing, Employment and Income/Benefits," Harm Reduction Research and Treatment Center, University of Washington Harborview Medical Center, March 31, 2016; and other evaluations of Seattle's LEAD found at <https://leadbureau.org/toolkit/resources/>.
49. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
50. Seema L. Clifasefi and Susan E. Collins, "LEAD Program Evaluation: Describing LEAD Case Management in Participants' Own Words," Harm Reduction Research and Treatment Center, University of Washington, Harborview Medical Center, Revised November 1, 2016, available at: <https://leadbureau.org/wp-content/uploads/2023/08/2016-Lead-Client-Satisfaction-Evaluation.pdf>. It is notable that this is the sole evaluation of the widely-promoted and touted LEAD program that incorporates participant voices among half a dozen that focus on recidivism and program completion-based outcomes (see <https://leadbureau.org/toolkit/resources/>)
51. Seema L. Clifasefi and Susan E. Collins, "LEAD Program Evaluation: Describing LEAD Case Management in Participants' Own Words," Harm Reduction Research and Treatment Center, University of Washington, Harborview Medical Center, Revised November 1, 2016, available at: <https://leadbureau.org/wp-content/uploads/2023/08/2016-Lead-Client-Satisfaction-Evaluation.pdf>. It is notable that this is the sole evaluation of the widely-promoted and touted LEAD program that incorporates participant voices among half a dozen that focus on recidivism and program completion-based outcomes (see <https://leadbureau.org/toolkit/resources/>)
52. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
53. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
54. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
55. Mancilla, G. (2018). Latinx youth counterstories in a court diversion program. *Taboo: The Journal of Culture and Education*, 17(4), 5.
56. Evan Anderson, Ruth Shefner, Rebecca Koppel, Cariné Megerian, and Rosemary Frasso, "Experiences with the Philadelphia police assisted diversion program: A qualitative study," *International Journal of Drug Policy*, 100 (2022).
57. Evan Anderson, Ruth Shefner, Rebecca Koppel, Cariné Megerian, and Rosemary Frasso, "Experiences with the Philadelphia police assisted diversion program: A qualitative study," *International Journal of Drug Policy*, 100 (2022).
58. Evan Anderson, Ruth Shefner, Rebecca Koppel, Cariné Megerian, and Rosemary Frasso, "Experiences with the Philadelphia police assisted diversion program: A qualitative study," *International Journal of Drug Policy*, 100 (2022).
59. Evan Anderson, Ruth Shefner, Rebecca Koppel, Cariné Megerian, and Rosemary Frasso, "Experiences with the Philadelphia police assisted diversion program: A qualitative study," *International Journal of Drug Policy*, 100 (2022).
60. Evan Anderson, Ruth Shefner, Rebecca Koppel, Cariné Megerian, and Rosemary Frasso, "Experiences with the Philadelphia police assisted diversion program: A qualitative study," *International Journal of Drug Policy*, 100 (2022).
61. Shdaimah, C., & Bailey-Kloch, M. (2014). "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), 287-300.
62. Shdaimah, C., & Bailey-Kloch, M. (2014). "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), 287-300.
63. Jessica M. Pollard, Ph.D., Jennifer Schuster, Ph.D., Hsiu-Ju Lin, Ph.D., and Linda K. Frisman, Ph.D., "Evaluation of a Gender and Trauma Specific Jail Diversion Program for Female Offenders, Part II," *American Jails*, (November – December 2007), 53-63.
64. Jessica M. Pollard, Ph.D., Jennifer Schuster, Ph.D., Hsiu-Ju Lin, Ph.D., and Linda K. Frisman, Ph.D., "Evaluation of a Gender and Trauma Specific Jail Diversion Program for Female Offenders, Part II," *American Jails*, (November – December 2007), 53-63.
65. Jessica M. Pollard, Ph.D., Jennifer Schuster, Ph.D., Hsiu-Ju Lin, Ph.D., and Linda K. Frisman, Ph.D., "Evaluation of a Gender and Trauma Specific Jail Diversion Program for Female Offenders, Part II," *American Jails*, (November – December 2007), 53-63.
66. Bacharach, A., & Strobel, D. (2021). *An overview of California's girls' and CSEC courts: Process evaluation report*. Judicial Council of California.
67. *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*. A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
68. Ray, A. & Caterine, E. (2014), *Criminal, Victim, or Worker?: The Effects of New York's Human Trafficking Intervention Courts on Adults Charged with Prostitution-Related Offenses*. Brooklyn, NY: Red Umbrella Project.
69. Ray, A. & Caterine, E. (2014). *Criminal, Victim, or Worker?: The Effects of New York's Human Trafficking Intervention Courts on Adults Charged with Prostitution-Related Offenses*. Brooklyn, NY: Red Umbrella Project. One study in which researchers interviewed participants in a Buffalo, NY HTIC found that survivors needed individualized access to a multiplicity of services beyond counseling, including emergency shelter, medical attention, educational or job training, non-judgmental services, and to not be rushed through a healing process. Program participants described being judged or mistreated by police, medical staff, and counselors. Roy Ahn, ScD, Elizabeth A. Mumford, PhD, Megan Cotter, MPH, Michelle Dougherty, MPH, Elizabeth Ramirez, BS, Amy Rosenfeld, MPH, "A Human Trafficking Intervention Court's Metropolitan Network Service Delivery Model: Program and Evaluation Implementation Guide," National Opinion Research Center (NORC) at University of Chicago, December 2022, available at: <https://www.ojp.gov/pdffiles1/nij/grants/305700.pdf>.
70. Jenna Torres, "How New York City's Treatment of Sex Workers Continues to Harm Us," Rewire News Group, September 22, 2015, rewirenewsgroup.com/article/2015/09/22/new-york-citys-treatment-sex-workers-continues-harm-us.
71. Andrea J. Ritchie, *Invisible No More: Police Violence Against Black Women and Women of Color* (Boston, MA: Beacon Press 2017).

72. *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.* A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
73. *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.* A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
74. *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.* A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
75. Harmon-Darrow, C., Afkinich, J., Franke, N. D., & Betz, G. (2023). Police Diversion at Arrest: A Systematic Review of the Literature. *Criminal Justice and Behavior*, 50(3), 307-329.
76. *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.* A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
77. *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.* A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
78. *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.* A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
79. Meredith Dank, Lilly Yu, Jennifer Yahner, Elizabeth Pelletier, Mitchyll Mora, Brendan Conner, “Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YSWW Who Engage in Survival Sex,” Urban Institute, 2015, available at: <https://www.urban.org/research/publication/locked-interactions-criminal-justice-and-child-welfare-systems-lgbtq-youth-ymsm-and-ysww-who-engage-survival-sex>.
80. *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.* A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
81. Meredith Dank, Lilly Yu, Jennifer Yahner, Elizabeth Pelletier, Mitchyll Mora, Brendan Conner, “Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YSWW Who Engage in Survival Sex,” Urban Institute, 2015, available at: <https://www.urban.org/research/publication/locked-interactions-criminal-justice-and-child-welfare-systems-lgbtq-youth-ymsm-and-ysww-who-engage-survival-sex>.
82. Dr. Sydney McKinney Aishatu Yusuf, MPA, *Repairing Black Girls’ Relationship with School: An Evaluation of the EMERGE Program for System-Impacted Girls*, National Black Women’s Justice Initiative, May 2022.
83. *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.* A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
84. *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.* A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
85. *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.* A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.
86. *Un-Meetable Promises: Rhetoric and Reality in New York City’s Human Trafficking Intervention Courts*, A report by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health.
87. *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.* A Working Paper by the Global Health Justice Partnership of the Yale Law School and Yale School of Public Health in cooperation with The Sex Workers Project of the Urban Justice Center. 2018.

The background features a series of overlapping, wavy bands in shades of purple, blue, and black, creating a textured, layered effect. A prominent diagonal stripe in red and black cuts across the composition from the bottom left towards the top right. The overall aesthetic is modern and dynamic.

©2024

NATIONAL BLACK WOMEN'S JUSTICE INSTITUTE
INTERRUPTING CRIMINALIZATION