



Date: September 19, 2022

To: Wanda S. Page, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Ryan Smith, Director of Community Safety
Subject: Contract Renewal with Legal Aid of NC to administer the Durham Expunction and Restoration (DEAR) Program

Executive Summary

Since the Durham Expunction and Restoration (DEAR) Program started in November 2018, the program has dismissed over 50,000 charges and waived over \$2.7 million in old traffic tickets for more than 35,000 people with Durham County charges. The program has also filed over 1,700 petitions for expungement. Over 90 percent of the people served by DEAR make less than \$25,000 annually and are people of color. In June 2022, City Council approved a budget that included \$150,000 for Legal Aid of NC to continue administering the DEAR program in Fiscal Year 2023.

Motion

To authorize the City Manager to renew a contract with Legal Aid of North Carolina in an amount not to exceed \$150,000 to administer the Durham Expunction and Restoration (DEAR) program.

Background

City of Durham spearheaded a collaborative effort between the City, Courts, local law schools, Legal Aid of NC, NC Justice Center, advocacy organizations and the NC Equal Access to Justice Commission to create the Durham Expunction and Restoration (DEAR) program in 2018. The program has become a national model over the past four years and has delivered on promises of scaling up access to legal services that can remove barriers to license restoration and expunge eligible charges from people's criminal records. The DEAR program has been administered by Legal Aid of North Carolina, and the contract is up for renewal.

In its most recent annual report of program metrics, Legal Aid reported in FY22 DEAR program staff filed 500 expunction petition for Durham residents, expunging 2,549 charges and 60 convictions from people's criminal records. Since Durham residents can have charges in other counties, the DEAR program works to expunge records across the state. Last year, DEAR expunged charges for Durham residents in 28 counties other than Durham. The program also worked with 29 residents to support driver's license restoration over the past year. This volume is considerably less than in previous years because DEAR completed a major push over its first three years of operation to waive over 11,000 tickets and 50,000 old charges.

The contract with Legal Aid will support continued efforts in Durham designed to increase employment opportunities for justice-involved residents by greatly expanding our community's capacity to expunge criminal records, grant certificates of relief (COR), and restore long term suspended driver's licenses through DEAR. DEAR will be administered by Legal Aid of North Carolina in close partnership with the Courts, City of Durham and multiple community partners

who comprise the DEAR Advisory Board. The City of Durham, shall contribute funds to partially fund program it helped to establish. DEAR will identify individuals eligible for expunction, COR, or restoration of their driving privileges within the court system and community and refer them to a network of providers within the community who will assist them with obtaining the relief needed.

For this contract period, Legal Aid will continue to dedicate two Legal Aid attorneys and one full-time paralegal to the DEAR project. This team of legal staff dedicated to the DEAR project will assist low-income Durham residents (consistent with Legal Aid's income guidelines) in expunging criminal records and restoring driver licenses. Residents will receive services at the courthouse, community clinics, and in other locations the DEAR team identifies can advance the goals of increasing access to legal services.

The DEAR Program has become a national model for a strong collaborative approach among nonprofits, city government, and the court system to improve justice outcomes for the low-income community. Working with partners such as the North Carolina Justice Center, NCCU and Duke Law Schools, and the NC Access to Justice Commission, the DEAR Program represented thousands of individual clients in filing petitions for expunctions and certificates of relief. In 2019, the DEAR worked with the Durham district attorney's office to become the first county in the state to complete a large scale, mass debt relief program to overcome long term driver's license suspension. DEAR's 2019 effort has been a model for 14 other counties throughout the state. This past spring, New Hanover County contacted Durham Community Safety staff to learn more about the DEAR program. Staff shared historical program documents and budgets with them, and in June we were notified that New Hanover County fully funded a proposal (\$350,000) to create a program modeled after DEAR.

Legal Aid attorneys staffing the DEAR Program, through a connection made by the City's I-Team, also partnered with a volunteer computer programming non-profit called Code for Durham to create an expunction petition generator tool to leverage the Second Chance Act's expanded expunction relief and speed up the process for analyzing and preparing petitions to expunge dismissed charges. During initial testing, DEAR attorneys found that the tool can save hours of time preparing a single petition while significantly reducing the number of data-entry errors. This tool is now in its final stages of development.

Legal Aid also continues to convene the DEAR Advisory Board. The Advisory Board, chaired by District Court Judge Amanda Maris and Superior Court Judge Josephine Kerr Davis, includes representatives from the District Attorney's Office, Clerk of Court, Public Defender's Office, NCCU Law School, Duke Law School, NC Justice Center, Durham Private Bar, George H. White Bar, NC Pro Bono Resource Center, Forward Justice, the Durham Community Safety Department, and the Criminal Justice Resource Center. The group meets every other month to support and advise the DEAR program and is integral to the program's success.

Issues and Analysis

Despite the progress DEAR has made since 2018, the reality is that decades of unjust laws and racially discriminatory practices in our criminal legal system will take more time to right. While DEAR has made significant progress in one of its two focus areas – driver's license restoration – significant work remains as outlined below. The passage of the Second Chance Act in 2020 has created an enormous number of charges that are now eligible for expunction but will require assistance from programs like DEAR for our residents to benefit from the relief provided under this most recent expansion of expunction eligibility. These two areas are detailed below.

Expunction

The passage of the Second Chance Act in June 2020 created the possibility for mass relief through DA initiated motions to remove eligible convictions and charges from criminal records as well as automating expunctions for dismissed charges disposed *after December 1, 2021*. Unfortunately, there is no mass relief for people who are eligible for other expunctions under the Act. Although expunction opportunities are available under more than a dozen statutes, the vast majority of people who are eligible for relief do not receive it because of barriers inherent in the expungement process. Because the Act does not provide automatic expunction of past charges, there remains an enormous unmet need to provide this relief to persons who have dismissed charges and not guilty verdicts already on their records. Even greater impact may be shown through expungement of convictions that occurred when the defendant was 16 or 17 years old under G.S. 15A-145.8A (Raise the Age), and of nonviolent felonies and nonviolent misdemeanors under G.S. 15A-145.5.

The convergence of the success of the DEAR Program, the development of the generator tool, and finally the passage of the Second Chance Act has created the ideal opportunity to further scale Durham's expunction efforts.

Driver's License Restoration

To date, Durham has taken great steps to overcome debt-based driver's license suspension. In January 2022, the NC Supreme Court adopted Rule 28, which requires the court to consider a person's ability to pay if the person submits Form AOC-CR-415 before court costs, fines, and fees are imposed. Additionally, the Administrative Office of the Court updated its form, reducing it from 4 pages to 2 pages, to make it easier to navigate. With the adoption of Rule 28 and the release of court form AOC-CR-415, the time is right for the DEAR program to take additional steps to reduce or avoid traffic debt for Durham residents.

To ensure North Carolinians who are unable to afford traffic fees and fines are not accruing court debt and suffering debilitating driver's license suspensions, the DEAR program will work with the NC Justice Center and the Courts to establish process for regular Ability to Pay assessments to avoid ordering fines and fees in traffic cases when defendants cannot afford to pay to prevent debt-based driver's license suspension. Developing a "local rule" for regularly assessing individuals' ability to pay and providing easy access to AOC-CR-415 form in traffic court will also aid indigent individuals before the court costs are imposed. The DEAR program will promote regular and fair use of the form by (1) training court officials about using the form, (2) creating systems to have assistance to help people fill out the forms, and (3) having the documents and instructional material available to all indigent people in traffic court.

Financial Impact

\$150,000 in funding was included in FY2023 Approved Budget for the Community Safety Department to cover the full cost of the contract. Legal Aid is also contributing through \$95,329 to fully fund this program.

Equal Business Opportunity Summary

This is not applicable as Legal Aid of NC is a non-profit organization.

Contractor Workforce Diversity & Hiring Practices

Due to the nature of this agenda item, obtaining Contractor Workforce Diversity & Hiring Practices information is not applicable.

Attachments

The following 6 attachments are included:

- FY23 contract with Legal Aid to administer DEAR
- Contract Attachment A: Program Scope and Description
- Contract Attachment B: Project Budget
- Contract Attachment C: Legal Aid DEAR Expunction Data Report FY2022
- Contract Attachment D: Legal Aid DEAR Demographics Report FY22