**LEAD National Support Bureau**

**Law Enforcement Assisted Diversion**

**Model Policy August 2017**

# I. PURPOSE

It is the policy of this department to establish procedures to establish a Law Enforcement Assisted Diversion (LEAD) initiative where low-level criminal offenses can be diverted from the criminal justice system to harm reduction based services. The LEAD initiative allows police officers to utilize discretion to divert low-level, non-violent offenders, whose offense is driven by problematic substance use, mental-illness, homelessness, or poverty away from the criminal justice system.

# II. POLICY

It is the policy of this department to implement and maintain a LEAD initiative, as well as to train officers in the principles of harm reduction, prearrest/booking diversion, and LEAD.

# III. GOAL AND CORE PRINCIPLES OF LEAD

LEAD is a community-based diversion approach with the goals of improving public safety and public order and reducing unnecessary justice system involvement of people who participate in the program. LEAD’s Core Principles are:

1. Reorient government’s response to safety, disorder, and health related problems;
2. Improve public safety and public health through research based, health-oriented and harm reduction interventions;
3. Reduce the number of people entering the criminal justice system for low level offenses related to drug use, mental health, sex work, and extreme poverty;
4. Undo racial disparities at the front end of the criminal justice system;
5. Sustain funding for alternative interventions by capturing and reinvesting justice system savings; and,
6. Strengthen the relationship between law enforcement and the community.

# IV. DEFINITIONS

**Policy Coordinating Group (PCG)** – The Policy Coordinating Group is the signatories of the Memorandum of Understanding, including the Police Department, the Mayor’s Office, the County Executive, the Sheriff’s Office, the

District Attorney’s Office, the Public Defender’s Office, Civil Rights groups, Public Health representatives, and Business District representatives. The PCG is the governing body of the LEAD initiative and is responsible for: reviewing and approving referral and diversion protocols; reviewing and approving Requests For Proposals (RFP) for securing service providers; reviewing and approving RFP’s for process and outcome evaluators; selecting service providers and evaluators; planning expansion or contraction of geographic area of operation; reviewing and providing guidance on reports from the Operational Workgroup; overseeing hiring process; and, providing guidance to the Project Director.

**Operational Workgroup (OWG)**– The Operational Workgroup is made up of personnel from the agencies who are involved in the day to day operations of LEAD. The OWG is coordinated by the Project Director. The OWG is staffed by of operational level personnel from the police department, sheriff’s office, district attorney’s office, public defender’s office, case managers, and service providers. The OWG is charged by the PCG to: develop and amend referral and diversion protocols; review active diversion/referral cases; provide operational support to case managers and outreach workers; and, provide periodic operational level reports to the PCG.

**Pre-Arrest Diversion** *–* Pre-arrest diversion is the process of diverting an individual who has committed a LEAD eligible offense from the criminal justice system to a case manager. The diversion takes place at the decision point of the police officer of either filing charges against the individual or utilizing discretion to divert the charge. Pre-arrest diversion case files are held by the police agency responsible for the diversion.

**Pre-Booking Diversion** *–* Pre-booking diversion is the process of diverting an individual who has committed a LEAD eligible criminal offense from the criminal justice system to a case manager. The diversion takes place at the decision point of the police officer of either filing charges against the individual or utilizing discretion to divert the charge with input from the prosecuting agency that has jurisdiction of the case. Pre-booking case files are held by the prosecuting agency that has jurisdiction of the case.

**Social Contact Referral** *–* A social contact referral is the process of referring an individual who has not committed a criminal offense to a case manager for services. Social contact referrals enable police officers to refer an individual who is criminal justice involved and is afflicted by problematic substance use, mental illness, poverty, or homelessness to services without having to wait for them to commit a criminal offense.

**Project Director** *–* The project director is responsible for the day to day operations of LEAD. The project director facilitates PCG meetings and OWG meetings. The project director coordinates training, media inquiries, and public presentations. The project director further liaisons with the community engagement coordinator and any researchers performing evaluations of LEAD.

**Harm Reduction -**is a range of public health policies designed to lessen the negative social and/or physical consequences associated with various human behaviors, both legal and illegal.

**Case Manager -** Under the supervision of the service provider, this position provides case management services to individuals referred by the police department, hereafter referred to as “participants.” In addition, this position will serve as a liaison to the larger coalition of LEAD partners.

**Outreach Specialist –**Works with the case manager (s) to conduct outreach and engagement services to individuals in the LEAD program.

**Community Engagement Coordinator –** The coordinator oversees the Community Leadership Teamandconducts community outreach to ensure the public is informed of and has a voice in LEAD. The coordinator liaisons with the project director and the PCG to determine educational opportunities.

**Community Leadership Team (CLT) –**  The CLT is made up on community members, activists, and personally affected individuals that ensure the community has a voice in the implementation and operations of LEAD. They conduct community outreach, educational forums, and distribute literature so that the community is kept up to date on LEAD activities.

# V. Eligibility Criteria

***Each agency should set eligibility/exclusionary criteria based on a needs assessment, input from Operations Work Group members, and final approval by the LEAD Policy Coordinating Group. It is recommended that line level personnel have significant input in this process. The underlined section applies to both examples.***

1. *Example 1*

*Persons who have a known history of alcohol, drug, poverty, homelessness, or mental health related needs will be eligible for diversion into LEAD when probable cause exists that the individual committed any of the following offense(s):*

* 1. *Non-violent Penal Law misdemeanors(s);*
  2. *Non-violent Penal Law violations(s);*
  3. *Non-violent General City Ordinance(s); and* 
     1. *The individual committed the offense(s) in relation to an alcohol, drug, poverty, homelessness, or mental health need.*
     2. *In cases where a victim exists they must be willing to decline prosecution in order to allow the individual access to LEAD.*

Except when:

* 1. The individual does not appear amenable to diversion;
  2. The individual is unable to give consent;
  3. The amount of drugs exceeds 7 grams;
  4. The suspected drug activity includes the sale of drugs and it is believed to sale for profit above a subsistence level;
  5. The individual exploits minors or other individuals;
  6. There is probable cause to believe the individual committed a violent offense;
  7. There is probable cause to believe the individual violated an order of protection;
  8. There is probable cause to believe the individual committed a domestic violence related offense;
  9. The individual is suspected of promoting prostitution;
  10. The individual is a registered sex offender;
  11. The individual needs acute emergency care due to being a danger to themselves or others;
  12. Without any time limitation, the individual has been convicted of any of the following offenses (including attempts):
      1. Murder 1st or Murder 2nd
      2. Arson 1st or Arson 2nd
      3. Robbery 1st
      4. Assault 1st; or,
      5. Any sex crime.
  13. Within the last 10 years has been convicted of any of the following crimes (including attempts):
      1. Robbery 2nd;
      2. Assault 2nd:
      3. Criminal Possession of a Weapon 1st; or,
      4. Burglary 1st or Burglary 2nd.

1. *Each agency should determine eligibility when the individual is on any type of supervision or has outstanding warrants. This should be done in coordination with the supervising agency or issuing court.*

**OR**

1. *Example 2*

*Persons will be eligible for diversion into LEAD when probable cause exists that they have committed a drug related or prostitution related offense.*

Except when:

* 1. The individual does not appear to be amenable to diversion;
  2. The individual is unable to give consent;
  3. The amount of drugs exceeds 7 grams;
  4. The suspected drug activity includes the sale of drugs and it is believed to be sale for profit above a subsistence level;
  5. The individual exploits minors or other individuals;
  6. There is probable cause to believe the individual committed a violent offense;
  7. There is probable cause to believe the individual violated an order of protection;
  8. There is probable cause the individual committed a domestic violence related offense;
  9. The individual is suspected of promoting prostitution;
  10. The individual is a registered sex offender;
  11. The individual needs acute emergency care due to being a danger to themselves or others;
  12. Without any time limitation, the individual has been convicted of any of the following offenses (including attempts)
      1. Murder 1st or Murder 2nd;
      2. Arson 1st or Arson 2nd;
      3. Robbery 1st;
      4. Assault 1st; or
      5. Any sex crime.
  13. Within the last ten years has been convicted of (including attempts)
      1. Robbery 2nd;
      2. Assault 2nd;
      3. Criminal Possession of a Weapon 1st; or
      4. Burglary 1st or Burglary 2nd.

1. *Each agency should determine eligibility when the individual is on any type of supervision or has outstanding warrants. This should be done in coordination with the supervising agency or issuing court.*

# VI Procedures

A. Arrest Diversion

1. Upon contact with an individual where probable cause exists that the individual committed a criminal offense the responding officer will determine if the individual is eligible for a diversion

to LEAD. This determination will be based on the eligibility/exclusionary criteria set forth in this policy.

1. If the individual does not meet the criteria they will be placed under arrest and processed.
2. After confirming eligibility, the officer may then offer the individual diversion to LEAD. This should be done in a noncoercive fashion in which the officer explains LEAD, including the fact that the individual will have 30 days to complete a full intake assessment or be in danger of being arrested on the original offense.
3. If the individual declines the diversion they will be placed under arrest and processed.
4. Once a determination has been made by the officer that the individual is going to be diverted into LEAD, and the individual agrees, the officer will contact the LEAD Case Manager at xxxxxx-xxxx.
5. The officer will provide a brief overview of the incident and consult with the case manager on where they will meet. Officers may release the individual to the case manager in the field or at their station. The location will be mutually agreed on by the officer and case manager.
6. The officer will complete a Crime Report showing the individual was diverted into LEAD and a LEAD Intake Form.

# VI. Case Management, Intake, and Assessment

1. Upon transfer of the individual to the case manager will conduct an initial screening to gather basic information about the individual, identify any acute medical needs, and determine if there are immediate needs that should be addressed prior to a full intake assessment. These needs include, buts are not limited to, shelter, clothing, and food.
2. The case manager will obtain written consent to be a participant in LEAD from the individual.
3. At the end of the initial screening the LEAD staff will set-up an appointment so that the individual can complete a full in-depth psychosocial assessment. Optimally the appointment will be made between twenty-four and forty-eight hours but can take up to thirty days dependent on the individual circumstances.
4. At the full psycho-social assessment the case manager will obtain a release of information from the individual so that the individuals progress may be shared with members of the operations workgroup.
5. The psycho-social assessment will be conducted under a harm reduction framework and will include an evaluation of:
   1. Chemical dependency;
   2. Mental health concerns;
   3. Housing;
   4. Prior legal issues;5. Employment; and,6. Education.
6. The case manager and the individual will then identify an Individual Service Plan(ISP) to help improve the quality of life for the individual and keep the individual from committing new crimes.
7. The case manager and the individual will work together to address the needs and action steps identified in the ISP.
8. Recognizing the individual may already be receiving services the case manager will work with the individual and the service provider to strengthen the connection of the individual to those services.
9. If the individual fails to complete the ISP the case will be referred to the Operations Workgroup for a determination of action on the original charge.

# VIII Social Contact Referrals

1. To the extent that LEAD has the capacity for additional participants an individual who fits the outlined criteria, but has not committed a new crime, may be referred into case management through LEAD.
2. Any social contact referral will be discussed and approved at the operations workgroup meeting.
3. If a participant is approved the referring member of the operations workgroup will work with the case manager to determine the best plan of action to reach out to the participant.

# VIIII Operations Workgroup

1. The operations workgroup(OWG) is made up of the project director, police department personnel, the case managers, a representative from the prosecuting attorney’s office, and a representative from the public defender’s office.
2. The OWG will meet on a bi-weekly basis.
3. The OWG will discuss any new arrest diversion or social contact referral, provide updates on any current LEAD participant, and determine any steps that need to be taken regarding the participants.
4. If an arrest diversion participant has not completed a psycho=social assessment the OWG will determine the appropriate step. This could include an extension or a filing of the criminal charge. If an extension is granted a plan of action to engage the participant.

# Public Outreach and Education

An informed public is a key component of LEAD. The more the public is informed the more likely the components of LEAD will be understood, preventing LEAD from being interpreted in a negative fashion.

The Community Engagement Coordinator oversees the Community

Leadership Team (CLT). The Coordinator works independently from PCG member agencies that have a role in enforcement or prosecution of criminal charges. The Coordinator will report all activities and feedback to the PCG monthly.

The Community Leadership’s purpose is to assist the PCG in educating the public on LEAD’s goals and objectives, provide information to the public on the purpose of LEAD, gather community feedback so that LEAD is incorporated into the fabric of the community, and ensure that LEAD in implemented and operated in a transparent manner. The CLT should be made up of community activists, people with justice involvement, former/current drug users, people affected by mental illness, people impacted by poverty and people who are currently/formerly homeless.

All PCG members shall participate in educating their staff, professional colleagues, and the public about LEAD.

**X. Prosecutor’s Role**

The District Attorney is a member of the Policy Coordination Group and a signatory to the Memorandum of Understanding. The district attorney’s office at each jurisdiction plays a key role in the daily operations of LEAD.

The prosecuting attorney’s office is responsible to:

1. Assist law enforcement in determining eligibility for potential LEAD participants;
2. In sites that are pre-booking, hold official charging paperwork pending the participants completion of the assessment;
3. Attend OWG meetings;
4. Track any pending or new criminal cases that a LEAD participant has in their jurisdiction;
5. Act as a liaison for any pending/new cases in courts outside of the prosecuting attorney’s jurisdiction;
6. Provide feedback at the OWG on any pending or new criminal case based on the LEAD participants involvement in case

management/services; and,

1. Make prosecutorial decisions based on the agreed upon plans at the OWG meetings.

# Acknowledgments

*This document was developed by the LEAD National Support Bureau, The Public Defender’s Association, and The Katal Center for Health, Equity, and Justice*.

*The LEAD National Support Bureau provides technical support for jurisdictions nationally that are exploring or implementing LEAD, and hosts learning collaboratives where the insights and lessons learned in this family of reform initiatives can be shared peer to peer among jurisdictions.*

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