

LAW ENFORCEMENT ASSISTED DIVERSION (LEAD)
REFERRAL AND DIVERSION PROTOCOL JUNE 2015

Mission & Purpose

Elected officials, law enforcement officers, and residents, business owners, and service providers in downtown Seattle and other King County communities want to improve public safety and public order in their neighborhoods, and want to reduce future criminal behavior by individuals engaged in low-level drug offenses. A non-randomized controlled trial has shown LEAD, which provides case management and diverts some cases from jail and prosecution, to be more successful at reducing recidivism than processing these individuals through the criminal justice system as usual.

Process for Diverting Individuals to LEAD in Lieu of Jail & Prosecution

In order to divert an individual to LEAD, the primary decision maker initially will be LEAD-trained law enforcement officers on the street and their sergeants, pursuant to clear criteria on which officers have been trained by command staff. LEAD trained officers and sergeants will make a series of decisions about the individuals they contact to determine whether or not those individuals are appropriate to go to jail, or to the community-based program. The determinations include:

- Is this person disqualified from community-based diversion due to particular criminal history, exploitation of others, or dealing for profit (not subsistence income)? (Exclusion criteria are detailed below.)
- Is the offense the person is alleged to have committed, an eligible offense for LEAD referral (low-level VUCSA, as defined below, or prostitution)?
- Does the person have any medical conditions at the time of arrest that require immediate medical treatment, detoxification or referral to a hospital?
- Is the person unable to provide informed consent and/or does the person pose a risk to self or others due to mental illness?
- Does the person have an existing no contact order, temporary restraining order, or anti-harassment order prohibiting contact with a current LEAD participant?
- Does the person display any interest in being offered services through a community-based diversion program rather than being taken to and booked into jail, or do the person's words and actions indicate it would be futile to attempt a diversion strategy?

A. Diversion process

In the context of the LEAD community-based diversion approach, diversion means that a person who could have been booked into jail and referred for prosecution will instead be engaged by LEAD program staff (an outreach and case management team) working for a social services provider. The LEAD team will provide an immediate individual assessment to determine what factors led the individual to engage in street-level drug activity or prostitution, and offer immediate crisis-related assistance as need. Then, over time and in a harm reduction framework, case managers provide comprehensive services to address those

factors and reduce the harm the individual is causing to herself and the community. The referred individual is considered to be in LEAD if (i) he or she completes an intake session within 30 days of referral, unless the operational workgroup extends that time on the recommendation of a LEAD law enforcement partner; and (ii) he or she signs a release of information allowing the sharing of information on an as-needed basis among the LEAD operational partners.

Meanwhile, the LEAD-trained officer or sergeant who made the referral to LEAD will complete the records that would be needed to refer the case to the King County Prosecutor or Seattle City Attorney, and forward the arrest packet for review to the arresting officer's supervisor. The narrative in the incident report will clearly state that the person has been referred to LEAD. If the LEAD-trained arresting officer determines that the suspect does not meet the threshold criteria for LEAD referral, and therefore books the suspect into jail and refers the case to the Prosecutor, she may nonetheless refer the case to the supervising sergeant for review by the LEAD team with a request to override the exclusion for a specific reason.

The days and times for diversions other than during regular business hours Monday through Friday, when diversions are always available, will be determined in advance every month by the case manager coordinator after reviewing possible night and weekend shifts provided by SPD. Once the "green light" schedule is determined, it will be circulated to all participating law enforcement agency supervisors. .

The service provider will make ongoing determinations of program capacity during the day/shift when they are accepting diversions (i.e., if three people have been referred in the previous two hours, it is possible that staff will not be available to conduct another intake, and LEAD referrals may cease until a staff member is available again).

After a LEAD-eligible client is arrested, and prior to booking, the LEAD-trained arresting officer or sergeant will call the LEAD service provider, and the individual will then be turned over to the case management team for initial screening. For SPD and NCI team referrals, the case management team normally will come to the SPD West Precinct and bring the individual to the LEAD service provider office or other pre-arranged location appropriate for intake, such as the Sobering Center, unless it works well to conduct the screening discussion in the Precinct report writing room or elsewhere in the Precinct. KCSO and Metro deputies will transport the person being referred to the REACH office, Sobering Center or other location specified by the case manager for the intake screening.

The LEAD-trained arresting officer will determine based on the eligibility criteria below, including her own assessment of the individual's amenability to the intervention model, whether an individual under arrest will be referred to LEAD. A prior referral does not preclude a second referral, but is a factor the officer can consider with respect to the individual's amenability to the intervention model.

LEAD-trained officers will complete a brief "LEAD Cover Sheet" for all VUCSA or prostitution arrests in neighborhoods where LEAD is available, indicating whether a LEAD

referral was made. SPD cover sheets will be referred to the SPD Narcotics Unit (regardless of whether a referral is made), and copies retained by the arresting officers' squads.

DOC officers will follow a different data collection protocol. DOC officers will complete and attach a "West Precinct LEAD Program Eligibility" arrest cover sheet to the arrest report for all arrests resulting in diversion to LEAD. DOC officers will also keep an ongoing log containing the names, dates of birth, and incident numbers of all individuals who are otherwise LEAD-eligible and who would have been diverted if not for resource limitations.

Staff of the LEAD social service provider(s) may also determine at the point of referral or subsequently that the individual is unlikely to make good use of the program's resources, and refer the case back to the law enforcement agency's point person for a decision about booking and referral for prosecution..

At least monthly, the LEAD team (LEAD program staff, precinct officers and commanders, the King County Prosecutor's Office, the City Attorney's Office, community advisory representatives and the LEAD project managers at The Public Defender Association) will hold staffing sessions in which the situation of particular participants will be reviewed. Whenever possible, operational partners will send the LEAD project managers at the PDA names of individuals they wish to discuss, with a brief statement of why, in advance of the workgroup meeting. To permit such discussions, LEAD participants who accept diversion will be required to sign waivers authorizing program staff to discuss their cases and progress with the other institutional partners at LEAD staffing sessions. These consent authorizations are a condition of participating in LEAD, and if not completed or if rescinded, the individual will be deemed not to be participating in LEAD.

Though they will be informed by the LEAD team staffing discussions, the King County Prosecutor's Office and City Attorney retain ultimate and exclusive authority to make filing decisions in all cases and to recommend dispositions and support or oppose release motions as they deem appropriate. Individual cases may be staffed more frequently via phone conference, email or text as needed.

The King County Prosecutor will receive copies of the investigation packets on diverted cases, for review within 72 hours for compliance with the agreed diversion criteria, and for comparison with those cases in which suspects were jailed and referred for prosecution.

B. Eligibility Criteria for Diversion to LEAD

Adults suspected of VUCSA and prostitution offenses will be eligible for diversion to LEAD and should be referred to LEAD, except when:

- The amount of drugs involved exceeds 7grams (except that where an individual has been arrested for delivery of or possession with intent to deliver marijuana, or possession, delivery or possession with intent to deliver prescription controlled substances (pills), officers will consider the other criteria listed here without reference to the amount limitation);

- The individual does not appear amenable to diversion;
- The suspected drug activity involves delivery or possession with intent to deliver (PWI), and there is reason to believe the suspect is dealing for profit above a subsistence income;
- The individual appears to exploit minors or others in a drug dealing enterprise;
- The individual is suspected of promoting prostitution;
- The individual has an existing no contact order, temporary restraining order, or anti-harassment order prohibiting contact with a current LEAD participant;
- The individual has an open case in Drug Diversion Court or King County District Court Mental Health Court; and/or the individual has disqualifying criminal history as follows:

Without time limitation: Any conviction for Murder 1 or 2 , Arson 1, Robbery 1, Assault 1, Kidnapping, VUFA 1, or any sex offense (or attempt of any crime listed here).

Unless more than 10 years has elapsed since conviction on any of the following: Robbery 2, Assault 2 or 3, Burglary 1.

Unless more than 5 years have elapsed since conviction on any of the following: Assault 4 – DV, Violation of a Domestic Violence No Contact Order, Violation of a Domestic Violence Protection Order, Burglary 2, or VUFA 2.

Individuals who are arrested on a DOC warrant and/or for a DOC violation may be referred to LEAD. The arresting officer (if not a DOC officer) should contact DOC personnel. DOC may determine in accordance with DOC policies that the individual should be referred to LEAD.

Individuals for whom the LEAD program could reduce the harm of their activity to themselves and to the community, but who are not diverted on the current charge under this protocol (e.g., due to specific criminal history), may still be referred to LEAD services by LEAD-trained law enforcement as social contact referrals (see below) It is possible that their involvement and progress in the LEAD program might be considered by the prosecutor or the court in subsequent charging, plea offer or sentencing decisions.

An individual who does not meet the threshold eligibility criteria (above) but whom the LEAD-trained arresting officer believes would be a good candidate for LEAD diversion may be accepted (post-booking) for diversion by the LEAD team on the recommendation of the arresting officer. There is no substantive right to be offered LEAD diversion. LEAD eligibility is not intended to be a substantive right to be litigated.

C. Warrants

Warrants will be served according to applicable policies and protocols, and individuals will not be immediately referred to LEAD in lieu of booking if they would otherwise be booked on a warrant.

Notwithstanding the above, if a suspect who would otherwise qualify for LEAD has an outstanding DOC warrant, the LEAD-trained arresting officer should contact NCI personnel. DOC/NCI may determine that the individual should be referred to LEAD according to DOC policies. Otherwise, the individual shall be booked into jail according to regularly applicable protocols and policies.

D. Referral of “social contacts” to LEAD; DOC CCO referrals

To the extent that the program has capacity to take them after responding to pre-booking diversion cases of individuals who could have been jailed and prosecuted, LEAD will also accept referrals from law enforcement of “social contacts,” that is, individuals perceived by officers as at high risk of arrest in the future for low level drug activity.

All social contact referrals to LEAD must meet the following pre-requisites:

- Verification by law enforcement that the individual is involved with narcotics (possession or delivery) or prostitution.
 - Verification by law enforcement means:
 - Police reports, arrests, jail bookings, criminal charges, or convictions indicating that the individual was engaged in narcotics or prostitution activity; or
 - Law enforcement has directly observed the individual's narcotics or prostitution activity; or
 - Law enforcement has a reliable basis of information to believe that the individual is engaged in narcotics or prostitution, such as information provided by another first responder, a professional, or credible community members.
- The individual's involvement with narcotics or prostitution must have occurred within the LEAD catchment area.
- The individual's involvement with narcotics or prostitution must have occurred within 24 months of the date of referral.
- No existing case in Drug Diversion Court or Mental Health Court.
- The individual cannot have an existing no contact order, temporary restraining order, or anti-harassment order, prohibiting contact with a current LEAD participant.

The Department of Corrections Community Corrections Officers (CCOs) may also refer individuals on community supervision for whom LEAD services are likely to provide assistance in preventing future law violations.

E. Intervention Protocol

Initial contact and referral by officers. Each participating law enforcement agency (SPD, KCSO/Metro, DOC/NCI) will devise its own procedure for review of social contact referrals by individual officers, deputies or sergeants.

Following the decision to refer an individual to LEAD, the referring officer, deputy, or sergeant will contact the LEAD program staff. The LEAD staff will come to the precinct or other agreed location, or officers may transport the referred person to the REACH office(s). LEAD staff will be available to respond immediately during designated periods when they are open for referrals.

When the outreach worker/case manager arrives, the referring officer, deputy or sergeant will provide her with basic information about the individual, including known criminal conviction history. The referring officer will document in his report that the outreach worker/case manager was called, arrived, and provided with this information and the referring officer will then release the suspect from custody. The officer will then leave the outreach worker/case manager to engage the individual.

If a suspect is intoxicated or incapacitated and unable to engage effectively in the intake process, the suspect should not be referred to LEAD at that time. The suspect can be referred to LEAD at a later time according to the same process used for suspects initially ineligible due to criminal history exclusions. If, in the officer and/or case manager's judgment, a suspect is unable to provide informed consent and/or poses a risk to self or others due to severe mental illness, the suspect will not be referred to LEAD. For non-intoxicated suspects, after the officer leaves, the outreach worker/case manager will complete an initial screening and schedule a follow-up appointment to conduct a detailed intake assessment.

Arrest Cover Sheets. LEAD trained SPD and KCSO/Metro officers who are making diversions to LEAD should complete and attach the "LEAD Program Eligibility" arrest cover sheet to the arrest report for every VUCSA or prostitution arrest made. This cover sheet should be completed for arrests made that result in diversion and for those *not* resulting in diversion.

DOC officers will follow a different data collection protocol. DOC officers should complete and attach the "LEAD Program Eligibility" arrest cover sheet to the arrest report for all arrests actually resulting in diversion to LEAD. (The instructions for completing the cover sheet are the same as described above for SPD officers.) DOC officers should also keep an ongoing log containing the names, dates of birth, and incident numbers of all individuals

who are otherwise LEAD-eligible and who would have been diverted if not for resource limitations.

Social Contacts. An officer making a social contact referral, approved by his or her agency's review process for such referrals, should contact the individual he/she seeks to refer. If the individual contacted is willing to be referred to LEAD, the officer can contact ETS REACH staff anytime from 8:30am to 4:30pm by calling the LEAD program coordinator at 206.588.9731. If the officer contacts the LEAD program coordinator after hours, he or she can expect a return call the next business day. However, if the officer is making a social contact referral during a Green Light Shift, the officer should contact ETS REACH staff via the LEAD Green Light phone number at 206.455.0386.

Intake assessment. When an individual is diverted to LEAD, LEAD staff will immediately conduct an initial screening to gather basic information about the person, identify any acute immediate needs, and assess the person's appropriateness for diversion. Based on the initial screening, the case manager will first work to meet any immediate needs that must be addressed, such as shelter for the night. She will also thoroughly explain the diversion process and the assistance that might be available through the LEAD program for a willing participant.

During the initial screening, LEAD staff should instruct the participants that they cannot return to the area where they were arrested for their LEAD-referred offense for the next 24 hours. If participants were initially arrested during a buy-bust, and shortly thereafter, return to the scene of a buy-bust, they may possibly be arrested for compromising the safety of the undercover officers who are working the buy-bust.

If an individual does not remain to complete the initial screening that immediately follows diversion, LEAD program staff will contact the supervising sergeant, and either the King County Prosecuting Attorney's Office or City Attorney's Office by phone or email. SPD may decide to re-arrest the individual or to refer the case to the prosecutor without arrest.

At the end of the initial screening, LEAD staff will schedule a follow-up appointment to perform an in-depth intake assessment, which should occur optimally between 24-48 hours after the initial screening, or as soon as otherwise possible, but not longer than 30 days from the referral date in the case of arrest referrals (there is no time limit for social contact referrals), unless the 30 day limit is extended by the referring officer/deputy or his or her sergeant. When completing the in-depth intake, the first task of LEAD staff is to determine the immediate cause of the individual's drug or prostitution activity on the street. In addition, the case worker will survey a wide range of factors that might contribute to ongoing encounters with law enforcement. Such factors include, but are not limited to: chemical dependency (alcohol and other drugs), mental health problems, lack of housing, prior legal involvement and/or gang involvement, lack of previous employment, and lack of education. LEAD funding and staffing may be used to address any factor or set of factors driving the participant to engage in problematic drug activity at the street level.

If an individual completes the initial screening, but refuses or fails, within 30 days from referral unless an exception is authorized by the referring officer/squad, , to complete the follow-up intake assessment, the LEAD social service provider will notify the King County Prosecuting Attorney's office and/or the Seattle City Attorney, depending on which office has jurisdiction over the case. The appropriate office may then decide to file a criminal charge in, and prosecute, the offense that was initially diverted to LEAD.

Individual Intervention Plan (IIP). Once any acute needs have been addressed, the case manager will work with each participant in one or more meetings to design an Individual Intervention Plan, which will form both the action plan for the individual and a key element of program evaluation. As noted above, the plan may include assistance with housing, treatment, education, job training, job placement, licensing assistance, small business counseling, child care or other services. The outreach worker/case manager will follow up with the individual to implement the intervention plan.

Although many elements of the intervention plan will be client-identified and -driven, and though participation is voluntary, the IIP will draw on the professional expertise of the case manager. If the case manager identifies needs for treatment or other services, she will either provide referrals to appropriate programs with available capacity (see discussion below of non-displacement principle) or procure needed services using project funding. In cases where chemical dependency or mental health services are needed, project participants will be asked to sign release of information forms allowing the case manager to consult with other professionals and with LEAD partners.

Withdrawal of services. Receipt of ongoing services is conditioned on the participant making, in the judgment of LEAD program staff, good use of the resources provided, and good progress toward reducing the harm his drug-involved behavior has brought to the community and himself. The possibility that services might be withdrawn should not be invoked lightly, but does act as a powerful motivator for participants to take the opportunity seriously and make good use of LEAD resources.

Regular staffing sessions with partners. At least monthly, LEAD program staff will conduct a staffing meeting that includes the key operational partners in LEAD: community advisory representatives, the Seattle Police Department, the King County Prosecutor's Office, the City Attorney's Office, the King County Sheriff's Metro police, and the Public Defender Association. LEAD partners will use the staffing meetings to share information about program participants' situation and progress; to discuss possible withdrawal of program support from participants who are not making effective use of the opportunity; to discuss referral criteria, program capacity and compliance with the protocol; and to focus the attention of LEAD program staff and SPD in particular areas viewed with concern by community representatives.

Community report back. The LEAD team will periodically reach out to neighborhood residents, businesses and community leaders to provide informational updates about LEAD operations and to receive feedback on areas of focus.

Goal of self-sufficiency; no time limit. IIPs will be designed to maximize the odds of a participant being able to achieve self-sufficiency independent of program funding at some point in the relatively near term. For some, this may entail a plan for vocational or higher education or achieving a GED; for some, it may involve job placement; for those who are not likely to be able to support themselves through work, it may entail applications for SSI and/or GAU.

Since the objective is actually securing changes in individual behavior, there will be no *a priori* limit on the time period in which an individual can receive services. The test, rather, is simply whether, in the judgment of LEAD staff, the participant is continuing to make good use of the resources LEAD is dedicating to him.

Core principles. Core principles of the intervention approach include:

- **A harm reduction philosophy.** Participants will be engaged where they are; they will not be penalized or denied services if they do not achieve abstinence. The goal is to reduce as much as possible the harm done to themselves and to the surrounding community through problematic drug activity. Again, some or all services may be withdrawn participants whom LEAD staff feel are not making progress toward reducing the harm caused by their behavior.
- **A non-displacement principle.** Because the objective is to increase safety and order for the community as a whole, it is unhelpful to achieve success for an individual program participant by bumping her up a wait list for scarce services, while necessarily bumping another community member who needs the same services further down the list. Where existing programs have unused capacity, and where they are appropriate fits for participants' identified needs, LEAD staff will know about and use those resources. However, LEAD program funding will be used to purchase or access additional resources that would not otherwise be available to this population.
- **Community transparency and accountability.** It is essential that community stakeholders and public safety leaders be able to participate in regular staffing meetings, have access to program performance reports, and have excellent access to program staff to suggest areas where outreach could usefully be concentrated. Community confidence that pre-booking diversion is a reasonable way to accomplish the goal of improving public safety is essential to the viability of the program.