



## **2-79 Law Enforcement Assisted Diversion (LEAD)**

### **Related SOP(s):**

2-19 Response to Behavioral Health Issues

### **2-79-1 Purpose:**

The purpose of the Department is to provide guidelines for employees trained in the Law Enforcement Assisted Diversion (LEAD) program which provides for the diversion of low level, non-violent offenders into treatment.

### **2-79-2 Policy:**

It is the policy of the Department to provide the LEAD program which 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.

### **2-79-3 Definitions:**

#### **A. Harm Reduction**

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. Harm reduction emphasizes public health and human rights. Harm reduction programs provide essential health information and services while respecting individual dignity and autonomy.

#### **B. LEAD**

A criminal justice diversion program developed with community input to address low level, non-violent offenders engaged in drug or sex work activity in order to divert them to community-based programs and services instead of jail or prosecution. By diverting eligible individuals to services, LEAD is committed to improving public safety and public order, and reducing criminal behavior of people who participate in the program.

#### **C. Substance Use Disorder**

A disorder that occurs in which an individual needs alcohol or another substance (drug) to function normally. Abruptly stopping the use of the substance leads to withdrawal symptoms. Substance use disorders occur when the recurrent use of alcohol and/or drugs causes clinically and functionally significant impairment such as



health problems disability, and failure to meet major responsibilities at work, school or home.

**D. Pre-Arrest Diversion**

The process of diverting an individual who has committed a LEAD eligible misdemeanor offense from the criminal justice system to a case manager. The diversion takes place at the decision of point of the police officer of either filing charges against the individual or utilizing discretion to divert the charge.

**E. Pre-booking Diversion**

Pre-booking diversion is the process of diverting an individual, who has committed a LEAD eligible felony offense, from the criminal justice system to a case manager. The diversion takes place at the decision of 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.

**F. Social Contact Referral**

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 currently not committing or committed a criminal offense 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.

**G. Jail Diversion**

The process to address the situation in which an individual's criminal behavior appears to stem from a behavioral health disorder and he or she would be better served in a treatment location rather than in a criminal justice setting, officers should seek such interventions in lieu of arrest. Jail Diversion includes;

1. Issuing a verbal warning,
2. Issuing a citation,
3. Giving a summons for misdemeanors or submitting a non-violent felony case to the District Attorney, or



4. Transporting a person to a mental health provider, either voluntarily or involuntarily pursuant to NMSA 43-1-10.

#### H. Criminal Justice Diversion

When an individual's criminal behavior appears to stem from a substance use disorder, and/or a behavioral health disorder, and he or she would be a candidate for LEAD, officers will use discretion in lieu of arrest. In lieu of arrest LEAD trained officers will submit the LEAD Intake Form and divert all charges from the criminal justice setting.

#### I. Criminal Justice System

The system of law enforcement that is directly involved in apprehending, prosecuting, defending, sentencing, and punishing those who are suspected of criminal offenses.

### **2-79-4 Rules and Procedures:**

#### A. Procedure of Making a LEAD Referral

1. In making the decision whether or not to divert an individual into LEAD, the initial decision maker will be the police officer who has contacted an individual who meets eligibility criteria to enter the program.
2. Officers will make a series of decisions about the individual with whom they come into contact in order to determine if the individual is appropriate to enter the program.
3. Referrals to LEAD can occur 24 hours, 365 days a year.
4. Initially case managers will only be available between 0800 and 1700 hours, Monday through Friday. However, police officers can transport the individual to the MATS campus at any time, where they will be cared for until a case manager is available.
5. Upon arrest, LEAD officers make the determination if they intend to divert an individual or if they plan to arrest, book and route the individual to the criminal justice system. If the determination is to arrest, book and route, the LEAD officer will transport the individual to jail and route the appropriate paperwork. This is to include the LEAD screening form.



6. Prior to initiating a LEAD case, the LEAD Officer will contact the Bernalillo County District Attorney LEAD Liaison and determine if the individual is eligible to be diverted.
7. If the individual is not eligible, the LEAD officer will proceed in the arrest procedures.
8. If the individual is eligible, the LEAD Officer will complete a LEAD Client Referral Form and contact at the on-duty case manager (If no case manager is on duty, the LEAD officer will transport the individual to the MATS campus at 5901 Zuni Rd SE.). If a case manager is on duty, the case manager will make arrangements with the LEAD officer to pick up the individual or meet the officer at the MATS campus intake. Once a case manager and LEAD officer meet, the LEAD officer will provide the LEAD Client Referral Form to the case manager and the individual is handed off to the case manager. If there is no case manager on duty, the LEAD officer will provide the MATS intake staff with the LEAD Client Referral Form..
9. All documentation will be completed according to Department policy and procedures, with the exception of the booking process. This is to include Criminal Offense Reports, Summons, Felony Supp-Outs, etc. LEAD Officers shall document the LEAD referral date, time and the case manager or MATS campus intake staff to whom the individual was released.

## B. Eligibility Criteria

1. Pre-Arrest Diversions (Misdemeanor Charges)
  - a. Adults who have a known history of alcohol, drug, poverty, homelessness or mental health related needs, will be eligible for referral to LEAD, and should be referred to LEAD in the pre-arrest phases, when probable cause exists that the individual committed and of the following offense(s):
    - i Non-violent misdemeanor(s);
    - ii Non-violent City Ordinance Violation(s); and
    - iii The victim is willing to decline prosecution, if applicable, in order to allow the suspect to proceed with diversion processes; Officers will explain LEAD to the victim and allow the victim to make their own decision; and
    - iv The individual committed the offense(s) in relation to an alcohol, drug, mental health, poverty, and/or homelessness related need, which can be based on, but not limited to, the following:



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- Police reports, arrest records, criminal histories, etc., indicating that the individual was engaged in such activity; or
  - Direct observation by police officers of the individual engaged in such activity; or
  - Police officers have a reliable basis of information to believe that the individual is engaged in such activity, such as, information provided by another first responder, a professional, a self-disclosure, or a witness.
- b. Officers will complete an Offense Incident Report form and Criminal Summons. Officers will complete the LEAD Client Screening Form and supply the Case Manager with a copy of this paperwork. Officers will hold a copy of this paperwork to file with the Bernalillo County District Attorney's Office for criminal charge(s), if applicable.
2. Pre-Booking Diversions (Felony Charges):
- a. Adults who have a known history of alcohol, drug, poverty, homelessness or mental health related needs, will be eligible for referral to LEAD, and should be referred to LEAD in the pre-arrest phases, when probable cause exists that the individual committed any of the following offense(s):
- i Criminal Possession of a Controlled Substance; Burglary:
  - ii The victim is willing to decline prosecution, if applicable, in order to allow the offender to proceed with diversion processes; Officers will explain LEAD to the complainant and allow the complainant to make their own decision; and
  - iii The individual committed the offense(s) in relation to an alcohol, drug, mental health, poverty, and/or homelessness related need, which can be based on, but not limited to, the following:
    - Police reports, arrest records, criminal histories, etc., indicating that the individual was engaged in such activity; or
    - Direct observation by police officers of the individual engaged in such activity; or
    - Police officers have a reliable basis of information to believe that the individual is engaged in such activity, such as, information provided by another first responder, a professional, self-disclosure or a witness.
- b. Officers will complete an Offense Incident Report form and Felony Supp-Out. Officers will complete the LEAD Client Screening Form and supply the Case Manager with a copy of this paperwork. Officers will forward a copy of this paperwork to the Bernalillo County District Attorney's Office. If it is determined that criminal charge(s) need to be filed on the individual, the Bernalillo County District Attorney's LEAD Liaison will file the charges.

3. Social Contact Referral or Self-Referral



- a. A social referral or self-referral is when a LEAD officer encounters an individual who meets the eligibility criteria for LEAD, but is not committing or has not committed a criminal offense. Often these will be individuals who officers encounter regularly and for whom the officer believes LEAD would be beneficial.
- b. The individual must meet the eligibility criteria, and not meet any of the exclusionary criteria.
- c. The individual must be willing to be transferred to the MATS Campus, at 5801 Zuni RD SE, in order to complete the LEAD Intake Assessment and meet with a case manager.

### C. Exclusion Criteria

1. Individuals shall be considered temporarily ineligible for diversion to LEAD if, at the time of initial police contact, the individual meets any of the following criteria:
  - a. The individual does not appear amenable to diversion;
  - b. The individual exploits minors or others;
  - c. There is probable cause to believe the individual committed a violent offense;
  - d. There is probable cause to believe the individual committed a felony, of any type, except Criminal Possession of a Controlled Substance;
  - e. There is probable cause to believe the individual is promoting prostitution;
  - f. There is probable cause to believe the individual violated an order of protection;
  - g. There is probable cause to believe the individual committed a domestic violence offense;
  - h. The individual is currently under the supervision of Probation and Parole;
  - i. The individual is a registered sex offender;
  - j. The individual is under the age of eighteen (18);
  - k. The individual is in possession of a controlled substance that exceeds six (6) grams; and,
  - l. The individual is in possession of prescription controlled opiates (pills) and there is probable cause to believe the individual is trafficking for a profit above the subsistence income.
2. Individuals shall be permanently disqualified from the LEAD Program if they have ever been convicted of any of the following offenses, including attempts:
  - a. Homicide (all offenses);
  - b. Arson;
  - c. Robbery (all offenses);



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- d. Aggravated assault with a deadly weapon;
- e. Aggravated battery with a deadly weapon;
- f. Kidnapping;
- g. Any criminal offense involving a deadly weapon;
- h. Aggravated burglary;
- i. Vehicular homicide.

3. If an individual qualifies for the LEAD Program, but is in need of emergency medical attention or an emergency mental health evaluation, the officer has discretion to forward a completed LEAD Client Screening Form to the case manager. Individuals will have three (3) working days to contact the case manager and complete the LEAD Intake Assessment, unless medical professionals state otherwise.
4. If an individual qualifies for the LEAD Program, but has an active warrant, may be arrested and processed. The officer has discretion to forward a completed LEAD Client Screening Form to the case manager. Individuals will have three (3) working days to contact the case manager and complete the LEAD Intake Assessment, unless the individual is being held at a detention facility.

**D. The LEAD Case Coordinating Group**

1. The LEAD Case Coordinating Group is a collaborative between Bernalillo County administrators and case managers, APD, Bernalillo County Sheriff's Office, the Second Judicial District Attorney's Office, a LEAD coordinator at the Law Office of the Public Defender, a person with lived experience, and any party to the LEAD Memorandum of Understanding.
2. This committee will hold staffing sessions in which referral decisions and program participants' progress will be reviewed.
3. LEAD partners will use the staffing meetings to discuss
  - a. Program participants' situation and progress;
  - b. Possible withdrawal of program support from participants who are not making effective use of the opportunity;
  - c. Referral criteria, program capacity and compliance with the protocol; and
  - d. To focus the attention of LEAD program staff, APD, and BCSO in particular cases.
4. Individual cases may be staffed more frequently via phone conference as needed.



E. The LEAD Policy Coordinating Committee

1. The LEAD Policy Coordinating Committee is a collaboration between Bernalillo County administration, the Second Judicial District Attorney's Office, LEAD coordinators at the Law Office of the Public Defender, the LEAD case managers, and any party to the LEAD Memorandum of Understanding.
2. This committee will hold staffing sessions to discuss major policy changes, program evaluation, funding, and service capacity.

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