

## 12.558 LAW ENFORCEMENT ASSISTED DIVERSION (LEAD) PROGRAM

### **References:**

Procedure 12.400, Incident and Miscellaneous Reporting  
Procedure 12.405, Closure of Offense Reports  
Procedure 12.553, Flagged Persons  
Procedure 12.555, Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders  
Procedure 12.600, Prisoners: Securing, Handling, and Transporting  
Procedure 12.715, Property and Evidence: Confiscation, Accountability, Processing, Storage and Release

### **Definitions:**

**Policy Coordinating Group (PCG)** – The Policy Coordinating Group is the signatories of the Memorandum of Understanding (MOU), including the Office of the City Manager, Hamilton County Administrator, the Hamilton County Heroin Coalition, Office of the Solicitor, Cincinnati Police Department, the Public Defender’s Office, Ohio Justice and Policy Center, and the Office of Reentry.

**Operations Working Group (OWG)** – The Operations Working Group consists of personnel involved in the day-to-day operations of the Law Enforcement Assisted Diversion (LEAD) such as the Police Department, City Prosecutor’s Office, case managers, and service providers who staff the OWG. Coordinated by the program administrator, 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. That diversion takes place at the decision point of the police officer to either file charges against the individual or utilizing discretion to divert the charge. 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 afflicted by problematic substance use, mental illness, poverty, or homelessness to services without having to wait for them to commit a criminal offense.

**Hamilton County Program Administrator** – The program administrator is responsible for the day-to-day operations of LEAD. The program administrator facilitates Policy Control Group meetings and Operations Working Group meetings. The program administrator coordinates training, media inquiries, and public presentations. The program administrator works in tandem with the Screening and Outreach Coordinator and any researchers performing evaluations of LEAD.

**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.

**Hamilton County Screening and Outreach Coordinator** – Will be an administrative position, supported by the Office of Reentry, instead of the grant. This position will focus primarily on community engagement, overseeing the Community Leadership Team, communication for LEAD and data. This position will not carry a caseload.

**Hamilton County LEAD Case Manager** – This position will monitor case managers, and the referrals that come in for LEAD. This person will carry a small caseload.

**Hamilton County Case Managers** – Will provide intense street-based case management and carry full client caseloads.

**Community Leadership Team (CLT)** – The CLT is comprised of community members, activists and personally affected individuals to 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.

**Purpose:**

It is the purpose of the Cincinnati Police Department (CPD) to create a procedure(s) that outlines and guides police officers in the fair and impartial implementation of the 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, who are often driven to offend due to problematic alcohol and substance use, mental-illness, homelessness, or poverty, away from the criminal justice system.

**Policy:**

It is the policy of the CPD to implement and maintain a LEAD pilot initiative with CPD District One and the Central Business Section, as well as train officers in the principles of harm reduction, prearrest diversion, and LEAD.

**Information:**

The PCG is the governing body of the LEAD initiative and is responsible for:

1. Reviewing and approving referral and diversion protocols.
2. Planning expansion or contraction of the geographic area of operation.
3. Reviewing and providing guidance on reports from the OWG; and
4. Providing guidance to the program administrator.

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.

### **Eligibility Criteria**

#### A. LEAD Eligibility Requirement Criteria:

1. A person who has a known history of alcohol or drug abuse, 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):
  - a. Misdemeanor Theft or Unauthorized Use of Property
  - b. Misdemeanor Drug Paraphernalia or Drug Abuse Instruments
  - c. Criminal Trespass
  - d. Disorderly Conduct
  - e. Criminal Damaging

#### B. Individuals who are not eligible to participate in the LEAD initiative:

1. Individuals who meet any of the following exclusionary criteria will be ineligible to participate in LEAD:
  - a. An individual who does not give his/her consent to be diverted into the program.
2. At the time of contact with the officer, there is probable cause to believe the individual has at present or immediately prior to contact:
  - a. The individual committed a violent offense.
  - b. The individual violated an order of protection.
  - c. The individual committed a domestic violence related offense that is eligible for arrest.

- d. The individual has pending charges involving a misdemeanor offense of violence, a felony offense of violence, violation of a protection order, or a felony sex offense.
  - e. The individual is suspected of promoting and/or compelling prostitution.
  - f. The individual is a registered sex offender.
3. Without any time-limitation, the individual has ever been convicted of any of the following offenses, including an attempt, complicity, or conspiracy to commit these offenses:
- 1) Murder
  - 2) Kidnapping or Abduction
  - 3) Aggravated Arson or Arson
  - 4) Aggravated Burglary
  - 5) Aggravated Robbery
  - 6) Felony Intimidation or Felony Retaliation; or
  - 7) Felonious Assault or Aggravated Assault
- a. Within the last three years has been convicted of, including attempts:
- 1) Robbery
  - 2) Felony Weapons Offense

### **Procedure**

#### C. Arrest Diversion Referral

1. Upon contact with an individual where probable cause exists that the individual committed one of the criminal offenses in section A.1. above, the officer will determine if the individual is a suitable candidate and is eligible for diversion into the LEAD Program. This determination will be based on the individual meeting **all** eligibility criteria and meeting **none** of the exclusionary criteria set forth above (Sections A.1 and B.1 in this policy), **and** the victim's agreement with the individual being diverted into the program instead of being physically arrested or issued a citation and criminally prosecuted. If the individual is both a suitable and eligible candidate for LEAD, and the officer intends to divert the individual into the LEAD Program, the officer will:
  - a. Speak with the victim of the offense and explain the LEAD Program.
  - b. Inquire whether the victim will consent to the individual being diverted into the LEAD Program in lieu of a physical arrest; and
  - c. Proceed with the criminal investigation and arrest/citation as necessary if the victim refuses consent

2. If the victim consents to the individual being diverted into the LEAD Program, the officer will do the following:
  - a. Explain LEAD to the individual and offer diversion into the LEAD Program in lieu of physical arrest. The officer shall offer participation in the initiative in a non-coercive fashion where he/she explains the LEAD Program and its goals. The officer must explain to the individual that he/she has 30 days to complete a full psycho-social intake assessment coordinated by the LEAD Case Manager or be in danger of being arrested and charged with the initial offense.
  - b. The officer will also explain to the individual that upon being diverted into the LEAD Program, the individual must consent to a search of his/her person, bags, and other packages in his/her possession. The individual must also consent to being handcuffed and immediately transported to meet with the LEAD Case Manager, to ensure the safety of everyone involved.
  - c. If the individual agrees to be diverted into the LEAD Program, the officer will complete the Form 616, Cincinnati Police Department (CPD) LEAD Initial Screening Form. The individual will sign the completed form, acknowledging their choice to enter into the LEAD Program, consent to be handcuffed, searched, and transported.

Note: Officers are reminded that the consent search required for LEAD does not supersede an officer's ability to conduct a pat down search of an individual where the officer has reasonable suspicion to believe the individual is armed and could be dangerous. Also, the handcuffing of individuals being detained is not per se unreasonable if the totality of circumstances supports the need to handcuff the individual.

3. After confirming eligibility, and both the individual and victim consent to diversion instead of arrest/citation and prosecution, the officer will contact the LEAD Case Manager at 513-946-7526 (PLAN).
  - a. The officer will provide a brief overview of the incident and consult with the case manager on where they will meet. Officers will search and transport the handcuffed individual and release him/her directly to the case manager at the Job and Family Services Building located at 222 E. Central Parkway Cincinnati, OH 45202, or at any police district. The transport location may also be a location that is mutually agreed upon by both the transporting officer and case manager.
    - 1) When the officer transports the individual to the case manager, the officer will submit to the case manager the signed CPD LEAD Initial Screening Form 616. The Officer will retain a copy of the signed Form 616 in his/her case files in a secure location at his/her district/section/unit of assignment.
  - b. The officer will complete an Ohio Incident Based Report prior to the end of his/her tour of duty indicating the report disposition as, "B-Prosecution

Declined,” and stating the individual has been diverted into the LEAD Program. The reporting officer will also include in the investigative notes the name of the case manager and the location where the individual was released into the program.

- 1) For offenses that are non-reportable, the officer will fill out an NTA and maintain that document in their case files in a secure location within the district/section/unit of assignment until they have been notified whether the individual has completed the psycho-social assessment and has been accepted into the LEAD Program.
- c. Upon notification from the case manager that the individual has completed the psycho-social assessment, the officer will make an RCIC entry flagging the individual as a participant in the LEAD Program and the name of the case manager. The flagged entry shall state, *“This individual is a Law Enforcement Assisted Diversion, LEAD Participant. Please contact his/her case manager at 513-946-7526 for further information.”*
- d. Upon notification from the case manager the individual has **not** completed the psycho-social assessment within the specified 30-day time period, the reporting officer will sign the initial misdemeanor charges and re-open the incident report. The reporting officer will change the initial RMS case closure disposition from, “B – Prosecution Declined” to, “Warrant(s) Signed,” adding the warrant number to the incident report.

#### D. Physical / Citation Arrest

1. If after the investigating officer thoroughly explains the LEAD Diversion Program to the individual, and he/she declines diversion or does not meet the eligibility criteria, or the victim refuses consent for the individual to be diverted into the LEAD Program, the officer will sign the necessary criminal charges or issue a citation and proceed with criminal prosecution.
2. Officers encountering a person who is already a participant in the LEAD Program where probable cause exists to arrest the individual on a new qualifying charge listed in section A.1. above, will contact the individual’s LEAD case manager and request a participation/progress status report. The officer will then incorporate that information when using his/her discretion to make the determination whether or not to arrest the individual for similar qualifying misdemeanor offenses into the LEAD Program.

#### E. Social Contact Diversion Referral

1. To the extent that the LEAD Program has the capacity for additional participants, an individual who meets the eligibility criteria, but who has not committed a qualifying criminal offense, may be referred into case management as a social contact referral.

- a. Officers will contact a LEAD case manager for further instructions for individuals agreeing to participate in the LEAD Program who have not committed a qualifying criminal offense.
- b. If the individual is diverted on the spot as a social contact referral and transported to the case manager, the officer must complete and have the individual sign the Form 616, CPD LEAD Initial Screening Form and must submit to the same search, handcuff and transport conditions listed in sections C.2.b. and c. outlined above in this procedure.