



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 1.2.6

### TITLE: ALTERNATIVES TO ARREST - DIVERSION

**EFFECTIVE: 11/26/2017**

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#### PURPOSE

Elected officials, law enforcement officers, residents, business owners, and service providers in New Orleans want to improve public safety and public order in their neighborhoods, while also reducing future criminal behavior by individuals engaged in low-level offenses. A randomized controlled trial has shown that Law Enforcement Assisted Diversion (LEAD), which diverts some low-level offenses away from jail and prosecution and instead provides individual case management, is more successful at reducing recidivism than arrest and detention.

#### POLICY STATEMENT

1. NOPD will employ LEAD to divert from custodial arrest and prosecution individuals who are suspected of having committed some low-level offenses, provided the individuals meet LEAD selection criteria, the individuals willingly participate in such diversion, sufficient resources exist to provide individual case management and services, and LEAD staff determine that such diversion is likely to reduce recidivism more successfully than arrest and detention.
2. The LEAD team, starting with the arresting officer, will provide an immediate and brief assessment to determine what factors led the individual to engage in misdemeanor criminal activity and offer immediate crisis-related assistance, as needed and available.
3. Over time and utilizing a harm-reduction framework, LEAD case managers will connect participants to comprehensive services to address the identified causal factors and designed to reduce the overall harm the individual is causing to himself/herself and the community.
4. The referred individual is considered to be in LEAD if:
  - (a) He/she completes a secondary and more comprehensive intake and assessment process within 30 days of referral (field screening) and receives a treatment and action plan. At this point, the suspect is no longer at risk for arrest and prosecution on the initial charge. The 30-day window may be extended by the Operations Working Group (OWG) on the recommendation of a LEAD Intake Officer (LIO); and
  - (b) He/she signs a release of information allowing the sharing of information on an as-needed basis among the OWG.

5. The LEAD Program Coordinator will make ongoing, real-time determinations of program capacity during the day/shift when the program is capable of accepting referrals (i.e., if three people have been referred in the previous two hours, it is possible that LEAD staff will not be available to conduct another intake, and LEAD referrals may cease until a staff member is available again).
6. The LEAD Program Coordinator shall update Communications Services continuously on changes in program working hours and capacity to accept diversions.
7. The LIO, approving supervisor, or LEAD staff may, at any time in the process, reconsider the suitability of a suspect for LEAD and **stop the diversion process** for any reason and make a recommendation to the OWG that the case be referred for prosecution. A final decision will be made by members of the OWG, including the suspect's case manager, regarding appropriate course of action and immediate next steps.

## DEFINITIONS

**Diversion**—In the context of the LEAD-community-based-diversion approach, diversion means that a suspect who could have been charged with a misdemeanor, booked into jail, or issued a summons, and referred for prosecution, will instead be engaged by LEAD program staff (a program coordinator and case management team) working with the City's Health Department and a local service provider.

**Lead Intake Officer (LIO)**—A New Orleans Police Department officer who is specially trained in LEAD intake and referral procedures. All Police Department members, including LIOs, will be trained on the principles of harm reduction and how to apply these principles when dealing with addiction, mental illness, homelessness, trauma, and poverty, as well as LEAD Operational Guidelines.

**LEAD Program Coordinator**—A person employed by the City of New Orleans and working within the New Orleans Health Department. (He/she will act as the primary outreach and case manager during the initial pilot phase.) When a behavioral health service provider is selected, he/she will coordinate case managers and peer support specialists working with people in diversion. He/she will also convene and facilitate OWG meetings and act as liaison between officers and others involved in LEAD to ensure the program is meeting NOPD partner needs.

**LEAD Service Provider**—An outreach and case-management team working for a behavioral health service provider designated by the City of New Orleans to provide immediate individual assessment of a suspect or individual referred by a New Orleans Police officer for diversion.

**LEAD Staff**—The LEAD Program Coordinator, Case Manager, and/or Outreach Staff who works with the Case Manager.

**NOPD Subcommittee**—A group of Police Department personnel who are responsible for developing the Operational Guidelines and for making recommendations to the OWG as LEAD is developed and implemented.

**Operations Working Group (OWG)**—A group of stakeholders, including NOPD's Subcommittee and LEAD staff, responsible for developing and amending the referral and diversion protocols, staffing program participants' cases per the Protocols, and providing periodic reports on resource utilization and participants' progress to the Policy Coordinating Committee.

**Policy Coordinating Committee (PCC)**—The signatories of the Memorandum of

Understanding who are responsible for reviewing and providing feedback on the referral and diversion protocols for LEAD candidates, reviewing and providing feedback on periodic reports from the OWG, making criminal justice and human services system data available for comparison and evaluative purposes, and providing policy and media guidance and administrative oversight for the LEAD program's operation and evaluation.

## LEAD PROCESS

8. The primary decision maker initially will be LEAD-trained law enforcement officers (**LEAD Intake Officer or LIO**) on the street and their sergeants.
9. There is no exception to the requirements for use of Body Worn Camera (BWC) or In-Car Camera (ICC) during any stop, arrest, screening and diversion under this Chapter. BWC and ICC, if applicable, shall remain in use from moment of contact through the final mark-up of the incident/item (see: **Chapter 41.3.10 – Body Worn Camera** and **Chapter 41.3.8 – In-Car Camera**).
10. LIOs and sergeants will make a series of decisions (field screening criteria) about the suspects they contact to determine whether or not those suspects should be:
  - (a) Diverted to the LEAD service provider;
  - (b) Issued a summons and released on his/her promise to appear; or
  - (c) Processed as an in-custody, physical arrest and booked (affidavit).
11. All field screening of suspects for LEAD suitability shall begin with a complete records check of the suspect by the arresting officer. Attempts at concealment of true identity or total lack of available data in the records system are criteria the arresting officer can use to assess suitability for diversion.
12. The LIO shall utilize the following screening criteria when determining the offense or suspect's eligibility for LEAD:
  - (a) Only **adults** are suitable for LEAD.
  - (b) Only **non-violent misdemeanor** (Municipal) criminal offenses are suitable for LEAD.
  - (c) The individual cannot have been physically combative with the officer at any time during the entire process from the initial stop to the turnover to LEAD service provider.
  - (d) If there is a **victim present who OBJECTS** to the diversion once explained by the officer, it will not take place.
  - (e) If the suspect requires immediate medical treatment, including but not limited to detoxification, LEAD cannot take place. Instead, the suspect will be brought to the appropriate facility for medical treatment. The enforcement action will be processed as a non-diversion action.
  - (f) If the suspect is unable to provide **informed consent** (impaired due to drugs or alcohol, as well as mental incapacity) to participate in LEAD, diversion will not take place and the suspect will be brought to the appropriate facility for medical treatment. The enforcement action will be processed as a non-diversion action.
  - (g) If the suspect poses a threat to self or others due to mental illness, it will not take place (see: **Chapter 41.25 – Crisis Intervention**).
  - (h) The suspect displays no interest in being offered services through a community based diversion program rather than being issued a summons, or taken to and booked into jail, or the suspect's words and actions about diversion or the service provider who arrives on scene indicate it would be futile to attempt a diversion strategy.

13. After a LEAD-eligible suspect is identified, and prior to the conclusion of any enforcement action (summons or affidavit), the LIO or sergeant will contact the Orleans Parish Communications District (OPCD) primary dispatch radio talk group for the District and provide them with the officer's name, district, suspect's name, and hand-off location.
14. OPCD will review the LEAD schedule to make sure a service provider is available and notes the officer's desired location for hand-off—either in the field or, if the officer has requested, to bring the suspect to meet the service provider somewhere else such as the police station or the LEAD office.
15. OPCD will text the dedicated LEAD phone number in order to reach the service provider on duty and provides that person with pertinent information: officer's name, suspect's name, and hand-off location.
16. When the service provider arrives at the hand-off location, the officer will contact OPCD on the primary dispatch radio talk group for the District, to note the time. The service provider then will gather any necessary additional information from the officer, will conduct a brief assessment of the suspect, and secures the suspect's signature on the consent form.
17. The officer will complete an FIC on the suspect (see **Chapter 41.12 – Field Interview Cards**).
18. The FIC will automatically transfer to the LEAD service provider/LEAD staff and the Commander of the 8<sup>th</sup> District for tracking purposes.
19. The service provider or LEAD staff may determine, at the point of referral that the person is unable or unwilling to follow through with an intake or assessment within the 30-day window allowed and refer the suspect/case back to the arresting officer for issuance of a summons or an affidavit and subsequent booking and referral for prosecution. However, if the diversion is accepted, the officer may clear the scene, contact OPCD and provide the appropriate disposition to close the incident after taking appropriate enforcement action. OPCD should note the time of contact by the officer so an evaluation of the efficiency of the program can be made.
20. The LIO or sergeant who made the referral (field screening) to LEAD will:
  - (a) Complete the FIC, EPR, and/or summons as appropriate for the charge and signal) that would be needed to refer the case to the appropriate prosecutor. The suspect must sign the summons, dated to appear in 45 days if diversion requirements are not fulfilled. (See: **Chapter 41.8 – Affidavits and Summons** and **Chapter 41.12 – Field Interview Cards**).
  - (b) Forward the LEAD packet for review to the LIO's supervisor.
  - (c) The narrative in the EPR, if one is written, will clearly state that the suspect has been referred to LEAD. If just a summons, it would indicate in the remarks that it is a LEAD referral. The summons shall be stamped with the LEAD stamp (available in the 8<sup>th</sup> District Station Front Desk).
  - (d) The sergeant shall forward the paper summons to the 8th District Commander, who will track it and forward it to the City Attorney for prosecution if necessary. The EPR (if written) will not be forwarded unless requested.
21. If the LIO determines that the suspect does not meet the threshold criteria for LEAD referral, and therefore charges the suspect, books the suspect into jail, and refers the case to the Prosecutor, the LIO may nonetheless refer the case to his/her supervising sergeant for review by the LEAD staff with a request to override the exclusion for a specific reason, within 1414 days of the stop.

22. If the suspect has not fulfilled the LEAD requirements within 30 days of the stop and referral, OWG shall discuss the case and determine whether to immediately refer the case for prosecution, continue LEAD requirements, or take other action in consultation with the service provider. If no progress has been made within 43 days of the stop and referral, the City Attorney may file the charge(s).
23. If, at any point in consideration for LEAD or during the suspect's performance of the LEAD requirements, the suspect is instead arrested on the underlying offense, the arresting officer shall notify the officer's supervisor and complete an arrest report pursuant to **Chapter 1.9 – Arrests**.

#### **PROGRAM / PROCESS ASSESSMENT DURING PILOT PHASE**

24. Informal LEAD program assessments will take place monthly in the first six months of operation under the pilot/development program and quarterly thereafter until the program is declared out of the pilot phase by the PCC. During this period, changes to this Chapter shall be made by General Order after approval by the OWG.