

# CORE PRINCIPLES FOR PROSECUTOR ROLE



***Law Enforcement Assisted Diversion (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. Prosecutors can play a unique role in maximizing the chances of a defendant changing their behavior through the following principles.*

**When possible, dedicate prosecutor(s) to support LEAD.** LEAD can operate without dedicated prosecutors, but recidivism and system utilization gains in Seattle/King County seem related to the King County Prosecutor having dedicated deputy prosecutor(s) who track and manage LEAD participants' non-diverted felony cases. LEAD will be maximally effective with dedicated prosecutor(s). The LEAD prosecutor(s) should have the authority to resolve LEAD participants' cases without having to persuade a peer, except in special circumstances (e.g., sex cases and violent crimes).

**Monitor whether diverted arrestees have completed intake within the time limit, and file if they do not.** This is crucial to maintaining good faith with participating officers. If the individual whose case is diverted does not complete intake within the specified period (e.g., 30 days in King County and Albany, NY, 7 days in Santa Fe), and if law enforcement does not agree to an extension due to extenuating circumstances, prosecutors need to file if the case otherwise meets filing standards.

**In non-diverted cases, use prosecutorial discretion at every stage to maximize the chance of behavior change.** Whether they enter the program through an arrest diversion or a social contact referral, LEAD participants often have other pending cases that pre-date their LEAD entry or charges that are filed after they enter the program. At every critical stage, there is an opportunity to use prosecutorial discretion in these cases to maximize the chances of a defendant changing their behavior.

## Options to consider:

- **Not filing a new charge** if the would-be defendant is doing well according to LEAD-involved officers and case managers, as court attendance requirements and the risk of incarceration on a warrant may interrupt the individual's progress
- **Making or supporting a release motion** if case managers have housing or treatment opportunities for the individual
- **Continuing a filed case to monitor progress** in order to guide disposition decisions depending on how the individual is progressing
- **Dismissing cases/charges without prejudice** if the individual is showing progress
- **Crafting a recommended disposition** that is not counter-productive to the intervention plan designed by the case manager and to the individual's progress to date – even if dismissal is not appropriate due to the seriousness of the charge or other circumstances

**Continuously obtain information from officers and case managers.** Such information should come from all available sources, both inside and outside the Operational Workgroup, about how individual participants are doing. This will inform prosecutorial decisions at critical stages in new and pending cases.

**Continuously convey information to officers and case managers.** They need to remain informed about upcoming court dates and decision points (e.g., filing decisions, release hearings). Explain to case managers what clients need to do for the prosecutor to take

favorable positions. This maximizes the leverage new and pending cases have in achieving behavior change.

**Coordinate with defense attorneys.** For the defense, the prosecutorial role in LEAD is new and may initially be hard to accept. Clearly articulate to the defense what that role is: essentially providing informal pre-

trial supervision that may result in a favorable exercise of discretion for the defendant. Clear and direct communication with defense attorneys helps ensure that defendants understand what they need to do to get the benefit of those discretionary decisions by the prosecutor.

*Updated 4.3.2020*