



Pre-arrest and Pre-booking Diversion and Mental Health in Policing

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Key Points

- A pre-booking/pre-arrest program in Seattle resulted in a reduction in re-arrest.
- Raise the requirement for crisis intervention training in the Basic Peace Officer Academy licensing course from the current 24 hours to 40 hours. Require the 40-hour CIT course for in-service training in the next training cycle for all officers.
- Adopt the PERF Guiding Principles into state requirements by statute where applicable and mandate the proposed training suggestions on use of force and crisis intervention as implemented by the Texas Commission on Law Enforcement.

Introduction

While pretrial diversion programs have been around for some time, moving the point of occurrence further back in the process with certain offenders creates an entirely new dynamic for the criminal justice system, the police, the offender, and the community. Specifically addressing mental health issues, to include substance abuse and addiction, some new approaches in law enforcement are showing promise. One of the more recent developments, pioneered by Seattle and King County, Washington, is the use of pre-arrest or pre-booking diversion programs initiated by police officers for adult offenders of certain crimes. Awareness of the need for crisis intervention training, programs, and policies in law enforcement is growing. The Law Enforcement Assisted Diversion (LEAD) program, its results, and the considerations and partnerships that went into its development, coupled with new approaches to crisis intervention as exemplified by the Houston Police Department may represent a model for Texas law enforcement to follow and allow law enforcement to return to its traditional role of the servant guardian.

Seattle Police Department and LEAD

The LEAD program was conceived in part due to litigation brought by the Racial Disparity Project through the [Public Defender Association](#) against the Seattle Police Department, alleging racial bias in the enforcement of drug laws in Seattle. While both sides expressed initial frustration—the police department was resentful of being portrayed as racist, and the Racial Disparity Project was seeking relief for those it represented—conversation and a

commitment to consensus-building proved fruitful toward innovation ([Washington Defender Association](#)).

Discussions between the Racial Disparity Project and representatives of Seattle Police Department and King County aimed to find alternative ways to enforce drug laws. A Seattle narcotics officer, for example, is credited with sparking the discussion by asking what they could do differently regarding drug policing ([Beckett, 5](#)). Additional meetings involving multiple stakeholders from various institutions, private entities, and members of the community resulted in the first-of-its-kind program. Named Law Enforcement Assisted Diversion, this new program placed emphasis on reducing the harm caused by certain offenses, notably low-level drug possession offenses (not related to sale or manufacturing drugs) and prostitution offenses, to the community and the offender. Seeking to divert some offenders away from the criminal justice system and toward services that would help them re-direct their lives, LEAD is a departure from all other diversion programs ([Beckett, 4](#)).

The Seattle Police Department and local prosecutors expressed willingness to move in a new direction after witnessing firsthand the ineffectiveness of their efforts at combating drug crime through aggressive arrest and prosecution. Recognizing that addiction and poverty were at minimum contributing factors to crimes such as possession of controlled substances or prostitution, they were open to ideas on how to reduce the problem and the large financial costs involved in enforcing those laws ([Beckett, 5](#)).

continued

The LEAD program was initially launched in a limited scope meant to provide a way to evaluate outcomes. This pilot program included use of the LEAD program's alternative diversion tools in one neighborhood and only during specific hours. A control group was created using the same neighborhood and traditional policing methods and procedures during a different set of hours as a means to compare outcomes over the same timeframe.

The stakeholders in LEAD also tried to mitigate the public's expectations for the program, taking special effort to explain the "harm reduction" principles. Expecting complete abstinence from drug use overnight or an immediate clearing of the neighborhood of drugs and prostitution could only result in disappointment and low support when those expectations fell predictably short; hence the stakeholders in LEAD aggressively sought to educate the public against such expectations ([Beckett, 12-13](#)).

The ability of Seattle police officers to offer access to the LEAD program through what is termed a "social contact," one where the offender is not committing a crime or subject to arrest, provides a unique opportunity for the community and the police department. An officer who makes contact with a citizen where probable cause does not exist for an arrest may still offer entry in the LEAD program for certain indicators; however these referrals are differentiated from arrest referrals for evaluating purposes ([Beckett, 10](#)). This opportunity provides a possible intervention for someone in need without an arrest having to take place, fully falling under the community caretaking functions traditionally provided by the police.

When they arrest someone deemed preliminarily eligible for LEAD, officers request an initial assessment by a case manager. During this assessment, a follow-up individual assessment appointment is scheduled and the arrestee is allowed to leave. Voluntary compliance with this subsequent evaluation triggers acceptance into the LEAD program. Failure to participate in the subsequent evaluation may result in prosecution for the original crime.

Evaluating Pre-booking Diversion in Seattle

Researchers from the University of Washington evaluated the LEAD program and found promising results. Shifts in the Belltown neighborhood of Seattle were randomly assigned to be a green light shift or red light shift. During green light shifts, officers were allowed to use the pre-booking diversion for qualified arrestees. Red light shifts required officers to process arrestees through the normal

criminal justice procedures. Red light shift arrestees (those who would have been LEAD-eligible under green light conditions) were used as the control group and represent the "business as usual" model ([Collins, et al., 7](#)). Included in the LEAD evaluation group were those who participated in LEAD through social contact, meaning a police officer referred the participant to LEAD evaluation without arresting the person but knowing they were in need of assistance.

The study considered two other variables to evaluate recidivism and re-arrest of those contacted: warrant and warrantless arrests. Warrant arrests are a difficult indicator for recidivism studies over a specified time period because the date the offense occurred can be prior to the beginning of the study. Warrants can be issued for, among other things, failing to appear for a previous court date, failing to pay a fine, or charges for an offense committed prior to the date of the warrant. They can also be issued for an offense before any arrest is made and would then count toward an arrest during the study period. Because of this, both types of arrests were evaluated.

When evaluated without the warrant arrest information included over a longer term (two years prior to implementation of LEAD evaluation, from October 2009 to July 2014), the study "indicated that the odds of at least one nonwarrant-related arrest among LEAD participants were 34% lower than those of control participants" ([Collins, et al., 17](#)).

Collins, Lonczak, and Clifasefi observe that LEAD reduced recidivism among participants by 22 percentage points when compared to the control group which went through the traditional criminal justice process. It is worthy to note that the traditional criminal justice process in this jurisdiction also included special courts (i.e., drug courts) tailored for some of the crimes involved in the LEAD evaluation (drugs, prostitution) and that LEAD, where diversion occurs prior to booking, was still more effective. LEAD surpassed even the 14 percentage points reduction in recidivism when needs assessment-based supervision was used, according to a previous study by the Washington State Institute for Public Policy ([Collins, et al., 21](#)).

A New Solution to Old Problems via the Houston Police Department

Nationally, mental illness affects about 50 percent of prison inmates and nearly two-thirds of jail populations.

The numbers are very similar for inmates with substance abuse disorders ([James & Glaze, 1, 4](#)). National studies show that approximately 17 percent of inmates admitted into jails would be considered to have a serious mental illness, and Texas jails house roughly 60,000 to 70,000 detainees on any given day, about 60 percent of whom are pretrial detainees. It can be estimated that there are over 6,000 pre-trial inmates suffering a severe mental illness in Texas jails at any given time ([Murphy & Barr, 3](#)). Pre-booking diversion offers the opportunity for those with substance abuse issues and co-occurring mental health issues to receive the treatment they need while avoiding incarceration.

The development of Crisis Intervention Teams (CIT) within some agencies can be viewed as another method of diversion, focusing on the safe conclusion to incidents related to mental health. The Houston Police Department has demonstrated full commitment to this concept with its Crisis Intervention Response Teams (CIRT) whereby a specially trained police officer is teamed with a licensed professional clinician for a patrol shift and is responsible only for responding to calls involving subjects in a mental health crisis. They operate twelve such units on a full-time basis, and in 2015 Houston CIT responded to 35,898 calls for service ([Houston Police Department 2014a](#)). Equally as impressive are the 40 hours of CIT training that each Houston police cadet receives in the basic academy (almost twice the state-mandated 24 hours), aiming to ensure that every officer responding to a mental health crisis call has the skills necessary to de-escalate a situation even when a CIRT unit is unavailable ([Houston Police Department 2014a](#)). The CIT units are part of Houston Police Department's Mental Health Division and in 2010 earned the selection of the Council of State Governments as a Learning Site to provide training nationally in the area of mental health response. They have provided this training to a nationwide audience since January of 2011 ([Houston Police Department 2016](#)). A best practices model resides right here in Texas.

When cooperating with private entities specializing in the treatment of mental health patients, law enforcement diversion becomes similar to the LEAD model's social contact mechanism for placing those in need into programs where they can receive help, even before a criminal act takes place. Many calls that police respond to involving a mental health component do not involve a criminal act. Training police officers to respond to the incidents they will predictably be involved in is a valuable hedge against potential tragedy. The Houston Police Department uses

diversion even earlier by identifying calls that present a mental health crisis and connecting the caller directly to a helpline counselor in the dispatch center through a partnership with the Harris Center for Mental Health ([Houston Police Department 2014](#)). This relieves the police department of the need to dispatch a police unit to some of the calls involving non-criminal acute mental health crises.

Becoming Servant Guardians Again

The near-universal law enforcement mission “to serve and protect” drills to the very core of policing. Serving and protecting the community involves more than arrests and citations. Modern police officers are community caretakers looking after the welfare of society. Moving away from an enforcement model favoring sanctions, which has become prevalent in policing, toward a servant/guardian model, may do more than just mend strained relations with the community. It might give police officers the tools to better fulfill their mission by helping those who need them most. However, there is more change needed in policing, and research continues on that front.

In January of 2016, the Police Executive Research Forum (PERF) released its *Guiding Principles on Use of Force* as part of its Critical Issues in Policing series ([PERF](#)). This report is centered on police interactions with subjects in mental health crisis who are not armed with a firearm. The latter qualifier is important because the report recognizes that calls involving a subject armed with a firearm present fewer options for responding officers.

PERF compiled 30 recommendations for law enforcement to adopt regarding use of force, involving subjects in a mental health crisis or substance abuse situation. A few key components are instructive in building a vision for the future of Texas law enforcement and policing.

Several PERF suggestions guide the profession back toward its intended role, and most are part of an overlapping theme. The first suggestion—that agencies prioritize and emphasize the sanctity of life ([PERF, 34](#))—may seem obvious but is a worthy reminder and sets the tone for the remaining guidelines.

The second guideline is in regard to the Supreme Court's 1989 decision in *Graham v. Connor*, the standard by which police use of force is evaluated legally. In this decision, the Court gave us the term “objectively reasonable,” whereby use of force is evaluated under

the Fourth Amendment's reasonableness standard for seizures. The qualification of reasonableness being objective was meant to allow for officers' actions to be considered in light of what a similarly trained and capable officer would do in similar circumstances. The Court's decision provides police officers with a guideline for *lawful* use of force but does not address at all what the public might consider appropriate. PERF's recommendation suggests police agencies should go beyond that minimum standard in developing policy and training.

This leads to the third guideline that recommends an emphasis on proportionality in the use of force. This guideline holds officers to a higher standard than *Graham v. Connor*. While the legal standard remains where the Court has set the bar, there is no reason agencies cannot set a higher standard for themselves in accordance with placing a priority on the sanctity of life ([PERF, 38](#)).

Guideline number four suggests de-escalation policies be implemented. De-escalation techniques should be a high priority for police officers who would then be required to use force less frequently ([PERF, 40-41](#)). Such a policy would also need to be accompanied by effective training in order to be a viable suggestion.

While many of the remaining guidelines are variations on the first three, number nine is directly related to interactions with mental illness-related police contacts. This guideline recommends a policy prohibiting the use of deadly force against individuals who pose a danger only to themselves ([PERF, 48](#)). This recommendation would go beyond the *Graham v. Connor* requirements and would represent a change in police culture by recognizing that waiting can bring about a non-violent solution to an incident that does not represent a threat to the public or officers, and that there is no need to rush to a conclusion. Time and distance can create safety for the public, the police, and the person in crisis, and negate the threat that close proximity and time constraints represent.

Finally, the 19th guideline specifically suggests training in mental health issues for all officers and in-depth training for some officers. The report also specifically recommends that agencies with the resources to do so adopt CIT teams (very much like the Houston model) with mental health professionals for response to

mental health crises. Education in this area should be a requirement for police agencies in order to give officers tools other than force in helping those in crisis ([PERF, 57](#)).

The PERF guidelines aim to improve public safety, the safety of the police officers, and the relationship between the community and the police. Each of the guiding principles is worthy of its own study, and all are the likely subjects of future papers by the Texas Public Policy Foundation. There is value in the research undertaken for the PERF study and its applicability to helping improve police response to mental health crises is commendable.

Recommendations for Texas

- Encourage the development of LEAD-style programs by making funding available through criminal asset forfeiture accounts, and change the state probation funding formula. This would still allow counties that use pre-booking/arrest diversion for subjects who would otherwise go on probation to access these funds and use them to monitor and treat clients in diversion programs.
- Adopt the PERF Guiding Principles into state requirements by statute where applicable and mandate the proposed training suggestions on use of force and crisis intervention. Task the Texas Commission on Law Enforcement (TCOLE) with developing curriculum and standards for both basic police officer training and in-service training for current officers.
- Raise the requirement for crisis intervention training in the Basic Peace Officer Academy licensing course from the current 24 hours to 40 hours. Require the 40-hour CIT course for in-service training in the next training cycle for all officers.

Conclusion

The Seattle LEAD study indicates that pre-booking or pre-arrest diversion programs show promise in reducing recidivism. They also provide law enforcement with a tool to help those suffering from mental illness or substance abuse to get treatment, potentially before criminal activity occurs. These programs divert low-level offenders from courts and incarceration. Teams trained in crisis intervention provide another mechanism for

limiting the potential for violence in mental health crises and could be a natural partnership in LEAD programs. The adoption of PERF guiding principles for use of force, particularly where related to mental health calls, are aimed at reducing risk to the public, the police, and to those who come in contact with the police. While Texas has already taken steps in furtherance of some of these goals, more can be done. ★

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Randy is passionate about law enforcement and criminal justice policy issues and is pursuing his Doctor of Management in Homeland Security. His research specialties include the militarization of law enforcement, police training, and police assisted diversion programs. Randy holds a B.S. in Legal Studies and a M.S. in Justice Administration and Crime Management from Bellevue University.

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