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Harm Reduction Drug Diversion Policy (HR Diversion “HR DIV”)

Effective 1/13/21

1. Increasingly, the effectiveness of the traditional approach to addressing and prosecuting low-level drug offenses, both on public safety and quality of life, is being called into question. These cases have a disproportionate impact on the community, consume a disproportionate share of resources, and yet, the impact of these efforts on these crimes appears less so than that for other crimes. At the same time, the sheer volume of low-level cases makes it much more difficult to focus attention on those cases where there are threats to public safety and quality of life.
2. If our system is intended to make Yolo County safer for the average law-abiding citizen, discourage illegal drug use through law enforcement intervention, and break the cycles of addiction among true addicts, then change is needed and we must assume responsibility to try and fix it. Therefore, this Harm Reduction Drug Diversion Policy will allow us to divert the vast and increasingly strained criminal justice resources it takes to simply cycle through thousands of low-level cases. The small army of people, the piles of paperwork and the massive amount of time can be better spent on far more vital public safety work.
3. Recent but steady changes in the law governing personal drug possession and use have eroded consequences and leverage and voluntary participation in drug courts. In fact, since 2014, drug court participation has decreased by 86% in Yolo County. Nearly everyone cited on these charges is out of custody. In addition, the law no longer requires any jail sentences (for instance, the mandatory minimum sentence of 90 days in jail for a violation of HS 11550 now carries no mandatory minimum), so defendants no longer face any realistic potential for jail time on misdemeanor personal drug crimes. Moreover, most judges no longer consider these cases as appropriate for any significant jail time no matter how many times the individual has been arrested/convicted for drug use crimes previously or the person’s poor participation in any drug court.
4. The need has arisen to draw a line between our narcotics cases: “public safety” cases and “public health” cases. This barrier is porous and may shift one way or another. Nonetheless, this barrier must be “moved” so that the criminal justice system is focusing on public safety cases, and the addiction professionals in the Department of Health and Human Services will have the first opportunity to address these public health cases.

5. The focus of this policy is on low-level drug possession offenses. These are isolated personal drug-use cases. These are typically cases in which law enforcement was investigating an unrelated crime and finds the suspect in possession of a personal-use quantity of narcotics or narcotics paraphernalia such as a methamphetamine pipe or a needle. A typical case would be the police pulling over an individual for a traffic violation and discovering a baggie of meth and/or a pipe, which results in a citation being issued.
6. The goals of this project are as follows:
 - To treat low-level drug crimes in a manner conceptually similar to how we treat other public health issues in order to separate the public safety cases from the public health cases.
 - To divert literally thousands of low-level recreational drug users out of the criminal justice system altogether and into the health care system.
 - To significantly reduce the strain on our office and the courts which prevents us from dedicating more of our resources to serious and violent cases and getting them out to trial. We will significantly reduce the strain on law enforcement who will no longer have to serve meaningless warrants and attend suppression hearings and instead can protect our community.
 - To address racial and class inequities that exist within the current system.
 - To conduct an analysis in six months, on July 1, 2021, when the effectiveness of this project can be measured against meaningful data and metrics to see if this practice should continue.
7. The Directive: If an adult person is cited/arrested for a low-level, personal-use drug misdemeanor(s), *i.e.*, applicable, personal-use subsections within Health & Safety Code Sections 11364, 11350, 11357, 11358, 11377 and 11550, and Business and Professions Code Section 4060, and the matter is forwarded to our office for prosecution, we will DIVERT these cases, pre-filing, by recording the information into our case management system as a Harm Reduction Diversion (HR-DIV) and then by referring the person cited/arrested to contact the Department of Health and Human Services. We will work with the Department of Health and Human Services to track the referrals made to them pursuant to this program, and if there are any unintended public-safety ramifications, then we will readjust. However, using discretion, we will only file the case if one of these conditions apply:

- a. The person has been previously convicted of a crime described under Penal Code Section 667(e)(2)(C), a.k.a. a “super strike”;
 - b. The person has 2 or more other misdemeanor drug/paraphernalia cases *in the last twelve months from the date of the citation/arrest at issue*; or,
 - c. The person is a registered sex offender.
8. This policy does not change the way law enforcement should continue to investigate and enforce the law regarding drug possession or drug use and this project relies on law enforcement’s continued efforts to submit such cases to our office as normal. This policy also does not apply to the following:
 - a. Drug trafficking cases, particularly organized drug trafficking efforts such as “Cartels”;
 - b. This policy does not apply to addicts who use over and over again. In fact, we believe that this policy will allow us to take a more proactive approach to hardcore addicts whose public behavior erodes civic life; and
 - c. This policy doesn’t apply to anyone who commits a different charged crime, such as vandalism, theft, trespassing or violence.
9. It is not an effective or appropriate use of a prosecutor to have him or her monitor an otherwise law-abiding citizen’s treatment for drug addiction when other non-drug crimes are not an issue. So, if the person doesn’t get the health treatment they need, that is the responsibility of that individual. If they commit another crime or if they are arrested for three or more drug crimes in a year, then they will be considered for traditional prosecution on those new offenses.

PROCESS/INSTRUCTIONS

1. For those qualifying drug charges that were pending charging on the day the policy is implemented, including arrests that occurred prior to the policy being implemented, those charges shall be referred to services per the process below and will not count toward the two (2) referrals before prosecution from the Policy.
2. The counting of the two (2) referrals before prosecution shall begin on the date the policy becomes effective. In other words, when the policy first starts it does not look “backwards” twelve months. Rather, the policy looks forward from inception to start counting the two drug arrests before traditional prosecution is considered.
3. For all of the above referrals (all deferrals of prosecution, both those drug cases in the queue when the policy was enacted and the first two in any twelve-month period thereafter), the reviewing/charging DDA shall: (a) “deny” the charges, (b) select

“HR-Diversion” in the dropdown menu as the reason for denial, (c) under Grants, select “Prefile Diversion-HR” (**THIS IS A TEMPORARY REQUIREMENT; ONCE LAWSUITE IS UPDATED, THE HR-DIVERSION GRANT WILL BE CREATED AUTOMATICALLY AS SOON AS THE HR-DIVERSION OPTION IS SELECTED FOR THE REASON FOR DENIAL**); (d) under Case Status, select “PCDiversion,”---NOT REJECTED--- and (e) send a Workup Request to Setup with assigned task as “misc” with instructions “HR-Diversion letter” (requesting date as the due date).

4. If the case is a multiple-defendant case, please send a workup request to professional staff to have the case “split” so the HR Diversion eligible suspect is separated into his/her own entry number.
5. The Adult Complaint form will need to indicate “Prosecutor Prefiling Deferral and in the empty box directly to the left, please check the box and indicate HR diversion. Please DPL.
6. For HR Diversion cases that have ALREADY been filed, if those cases are dismissed please indicated under Outcome “CASE DISM” but then in the free text box for CASE DISM put #HRDIV.