Public Defender Association
Equity
Public Health & Safety
Justice System Reform

January 30, 2017

Hon. Thomas J. Wynne
Chair
JISC Data Dissemination Committee
18000 International Blvd. Suite 1106
SeaTac, WA 98188

Dear Hon. Thomas J. Wynne,

I am writing to request JIS LINK level 20 access for the Public Defender Association (PDA), which administers the Law Enforcement Assisted Diversion (LEAD) program for King County.[1] This access will be used by PDA's four attorneys attached to the LEAD program (and our legal assistant) to assist LEAD clients and the other LEAD operational partners, including prosecutors and law enforcement, by coordinating the disposition of open criminal cases, quashing warrants, coordinating the payment of legal financial obligations (LFOs), and re-instating driver's licenses.

LEAD is an inter-agency partnership

LEAD involves a collaboration between the Seattle and King County executive departments, prosecutors, and law enforcement, as well as nonprofit legal organizations, and human service agencies to divert low-level drug and prostitution offenders to behavioral health services and case management instead of prosecution and jail. Specifically, LEAD is governed by a memorandum of understanding between the Seattle Mayor's Office, the King County Executive's Office, the King County Prosecutor's Office, the Seattle City Attorney's Office, the Seattle Police Department (SPD), the King County Sheriff's Office (KCSO), the American Civil Liberties Union of Washington, and the Public Defender Association (see attached).[2] Nearly 99 percent of LEAD funding comes from King County and the City of Seattle. PDA serves as project manager, working for the governing partners who form the Policy Coordinating Group under the MOU as described above to provide overall coordination for the program.

LEAD participants are referred into the program by SPD officers, DOC officers or KCSO deputies prior to booking, or on a social contact basis as a crime reduction/crime prevention measure for people known to officers to engage in drug-related crime. LEAD participants then enter a trauma-informed, intensive case-management program run by an experienced behavioral health services provider (Evergreen Treatment Services' REACH program at present) to address unmet needs, such as homelessness, drug addiction, and mental illness. Each LEAD participant has an assigned a case manager and service plan; currently there are approximately 400 active LEAD participants.

PDA serves as project manager of LEAD. This includes managing the day-to-day collaboration between government, prosecutors, law enforcement, and case managers within the program. It also includes providing and facilitating assistance to LEAD participants' on their open criminal cases, bench warrants, LFOs, and suspended driver's licenses through PDA's four attorneys ("LEAD attorneys") to help LEAD participants progress under their service plans. Prior to enrollment in the LEAD program, LEAD

[1] Despite our name, PDA does not provide public defense services. In 2013, King County brought public defense services in-house, including employees formerly housed at our office under the name The Defender Association (TDA). PDA now houses the project management and justice system reform work formerly done in a project of the former TDA. We design and implement policies and models, such as LEAD, that improve on conventional responses to crime and public order issues.

[2] At the time the MOU was signed PDA was then DBA "The Defender Association/Racial Disparity Project."

participants come into frequent contact with the criminal justice system due to their unmet needs, which gives rise to this array of legal issues. These legal issues frequently span counties, requiring coordination with prosecutors and public defenders outside of King County who are not part of nor familiar with the LEAD program. Coordinating these legal needs is often a necessary prerequisite before case managers can connect LEAD participants with housing, substance use treatment, and mental health treatment. In short, LEAD attorneys' assistance is a core part of LEAD to maximize the opportunity to achieve behavioral change.

JIS LINK level 20 access is necessary to effectively coordinate legal needs

Without JIS LINK level 20 access, LEAD attorneys cannot effectively assist clients in coordinating legal needs. Level 20 privileges would allow access to the DCH screen in JIS LINK, which is essential to LEAD attorneys for several reasons. First, access to the DCH screen would enable LEAD attorneys to determine which of a client's criminal cases are open. This information is necessary so the attorney can coordinate the disposition of all open cases. Clients often have as many as 70 associated cases, making it impractical to determine which cases are open without access to the DCH screen. Second, access to the DCH screen would allow attorneys to determine which cases have associated open warrants. Due to the large number of cases associated with LEAD participants, the DCH screen offers the only practical way to perform a warrant search. Third, access to the DCH screen would allow attorneys to determine which cases have associated LFOs. Most LEAD clients have numerous cases with associated LFOs. These LFOs, often span many years and require significant coordination to create a workable resolution for clients, who are frequently indigent. Addressing LFOs is of paramount importance to clients since LFOs can have serious negative consequences on employment, housing, finances, and credit ratings.[3] Additionally, in order to coordinate the resolution of outstanding LFOs, LEAD attorneys request access to the Case Financial History Summary screen and the Plea/Sentencing screen available under level 20 access. Once the DCH screen is used to identify which cases have associated LFOs, these screens would allow LEAD attorneys to determine whether LFOs are mandatory or discretionary, dictating the resolution options available to LEAD clients. Finally, level 20 access would allow attorneys to access LEAD clients' driver's license and ID numbers. Reinstating driving privileges is an essential step for many LEAD clients, as they seek to return to work. Access to this information would allow LEAD attorneys to assist clients who cannot locate their license or ID numbers, since this information is necessary in order to use the Department of Licensing's "Learn How to Reinstate Your License" tool.

PDA is a public purpose agency and the four factors for additional access outlined in JIS Committee Data Dissemination Policy support granting increased access

The JIS Committee (JISC) authorized the Data Dissemination Committee (DDC) to act on its behalf in reviewing and acting on requests for increased access by non-court users.[4] The JISC Data Dissemination Policy (DD Policy) permits "public purpose agencies" to be granted additional access to JIS records beyond that which is permitted to the public.[5] As defined by the DD Policy[6] a public purpose agency includes "non-profit organizations whose principal function is to provide services to the public."[7] PDA qualifies as a public purpose agency as it is an incorporated non-profit organization in Washington whose principal function is providing services to the public. The LEAD program managed by PDA is open to members of the public and provides a range of support services to participants, including services to address behavioral health issues,

[3] *State v. Blazina*, 182 Wash. 2d 827, 837 (2015).
[4] JISC Bylaws, Article 7, Secs. 1 and 2.
[5] DD Policy, Sec. IX.B.
[6] The definition of "agency" in RCW 42.17.020 was later recodified in RCW 42.17A.005(2).
[7] DD Policy, Sec. IX.A.

case management and legal services. The LEAD program is almost entirely funded by City of Seattle and King County. As mentioned above, nearly 99 percent of projected 2017 LEAD funding ($2,557,500 of $2,592,500) comes from county and city sources. Furthermore, this committee has found that nonprofit organizations offering similar services qualified as public purpose agencies.[8] Once established as a public purpose agency, the DD Policy outlines four criteria which the committee may use in deciding PDA's request:

1. "The extent to which access will result in efficiencies in the operation of a court or courts.
2. The extent to which access will enable the fulfillment of a legislative mandate.
3. The extent to which access will result in efficiencies in other parts of the criminal justice system.
4. The risks created by permitting such access."

Relevant here are factors one, three and four. In relation to the first factor, JIS Level 20 access will increase efficiencies in the operation of courts by aiding LEAD in the disposition of existing legal obligations. Courts have an interest in ensuring that criminal cases are resolved in a timely fashion and level 20 access would allow LEAD attorneys to promote this goal by assisting clients in resolving open criminal cases and addressing outstanding warrants. Without level 20 access, LEAD attorneys' ability to handle cases is hampered and results in delays. When for example a client has as many as 70 associated cases as mentioned above, and we cannot rapidly determine which cases are open or closed, and which cases have LFOs and which do not, our ability to rapidly handle and dispose of cases is delayed. Additionally, courts have an interest in seeing that individuals comply with conditions imposed at sentencing, such as LFOs. Increased JIS access would allow LEAD attorneys to assist clients in ascertaining what LFOs have been imposed and in creating a plan to satisfy those LFOs.

Consistent with the third factor outlined by this committee, increased access will create efficiencies in other parts of the criminal justice system. Specifically, efficiencies will be created in the use of law enforcement, jail, and prosecution resources. Level 20 access will assist clients in addressing open warrants, obviating the need for the use of law enforcement resources to arrest LEAD clients for open warrants. Additionally, quashing warrants before arrest will reduce burdens on local jails, which must house those arrested for warrants. Furthermore, with increased JIS access, LEAD attorneys will be able to ensure that prosecutors, defense attorneys, and judges across the state are informed of an individual's involvement in LEAD, reducing the risk that LEAD participants are subject to court-imposed conditions and receive court resources that are duplicative or counter-productive to the treatment plan developed through LEAD.

On a broader level, enabling LEAD attorneys to handle cases more efficiently via level 20 access will increase the capacity of the program. Under the program's design, the more cases LEAD is able to handle the greater the efficiencies and savings across the criminal justice system of the city and county as demonstrated by University of Washington researchers. A 2015 evaluation by the University of Washington found that after entering LEAD, on average, a client's cost to the criminal justice and legal system decreased $2,100.[9] In comparison, on average, a member of the control group's cost to the criminal justice system

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[8] *See* JISC DD Committee Draft Meeting Minutes, Jun. 24 2016 (granting JIS LINK level 20 access to attorney volunteers in the Drive Legal Whatcom Program, a nonprofit organization assisting individuals in reinstating driving privileges). *See* JISC DD Committee Minutes, Jun. 22 2010 (granting JIS Link level 20 access to volunteers in the Clark County Volunteer Lawyers Program).

[9] Collins, Susan, Heather Lonczak and Seema Clifasefi. "LEAD Program Evaluation: Criminal Justice and Legal System Utilization and Associated Costs." Harm Reduction Research and Treatment Lab, University of Washington—Harborview Medical Center (2015).

increased $5,961.[10] LEAD program participants had 1.4 fewer jail bookings per year subsequent to their evaluation entry and participants spent 39 fewer days in jail per year.[11] Additionally, compared to the control group, LEAD participants had 87% lower odds of at least one prison incarceration subsequent to evaluation entry.[12]. Expanded JIS access will allow LEAD attorneys to coordinate LEAD participants legal needs much more efficiently, enabling increased volume and increasing criminal justice system savings.

Finally, in relation to the final factor outlined by this committee, PDA will minimize risks by limiting increased JIS access to a small group of attorneys. At present, PDA employs four attorneys who assist LEAD clients.[13] JIS Level 20 access would be restricted to these four attorneys and used solely in coordinating the legal needs of LEAD clients. Among these attorneys is PDA's Director, Lisa Daugaard, who previously served as the Deputy Director of the King County Department of Public Defense, and has over 15 years of experience supervising public defenders with JIS Level 20 access.

Finally, it is worth noting that expanded JIS access would further the Access to Justice Technology Principles developed by the Access to Justice Board and endorsed by the JISC. LEAD participants, many of whom are homeless and suffer from mental illness and substance use disorder, face significant barriers to accessing justice resources. As such, increased access for LEAD attorneys would "promote the opportunity for equal participation in the justice system for all."[14] For example, due to unmet behavioral health needs, LEAD clients frequently must satisfy numerous LFOs resulting from criminal conviction. Attorneys provided through LEAD likely offer the only opportunity for these clients to create a plan to satisfy these obligations.

Thank you very much for your consideration. Should you have any questions before the Committee's next meeting, please do not hesitate to reach me at andrew.kashyap@defender.org, (206) 818-7849.

Sincerely,

Andrew Kashyap
Senior Attorney
Public Defender Association

Encl.

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[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] It is very likely that a fifth attorney will be added in Fall 2017 in conjunction with the addition of a new funding stream.
[14] Access to Justice Board, "Washington State Access to Justice Technology Principles" (2004).

MEMORANDUM OF UNDERSTANDING

Among

SEATTLE OFFICE OF THE MAYOR, SEATTLE CITY ATTORNEY'S OFFICE,
SEATTLE POLICE DEPARTMENT,
KING COUNTY EXECUTIVE, KING COUNTY PROSECUTING ATTORNEY,
KING COUNTY SHERIFF,
THE DEFENDER ASSOCIATION, AND THE ACLU OF WASHINGTON

Regarding

LAW ENFORCEMENT ASSISTED DIVERSION PROGRAM
COORDINATING GROUP: FORMATION, GOVERNANCE, AND RESPONSIBILITIES

WHEREAS, the City of Seattle ("City"), King County ("County"), and residents and business owners in the Belltown community of downtown Seattle ("Belltown") and the Skyway community of unincorporated King County ("Skyway") want to improve public safety and public order in the Belltown and Skyway neighborhoods; and

WHEREAS, the City, County, and Belltown and Skyway community members want to reduce future criminal behavior by low-level drug offenders contacted in Belltown and Skyway; and

WHEREAS, booking, prosecuting, and jailing individuals committing low-level drug offenses in Belltown and Skyway has had limited effectiveness in improving either public safety or public order in the neighborhoods; and

WHEREAS, interventions that connect low-level drug offenders with services may cost less and be more successful at reducing future criminal behavior than processing these individuals through the criminal justice system; and

WHEREAS, private foundations have stepped forward to provide start-up funding for the operation and evaluation of a robust pre-booking diversion demonstration project in the City and County with the understanding that the project presents a unique opportunity to work with local

partners on a new strategy that holds promise for effecting systemic change and a paradigm shift in the public response to individuals' low-level drug involvement;

NOW, THEREFORE, THE PARTIES STATE THEIR INTENT AS FOLLOWS:

A. **Formation, Purposes, and Membership of the Law Enforcement Assisted Diversion ("LEAD") Coordinating Group.** A Coordinating Group is hereby formed for the LEAD pre-booking diversion demonstration project. The purposes of the Coordinating Group are to review and provide feedback on the Referral and Diversion Protocols for LEAD candidates, approve Requests for Proposals ("RFPs") for service providers and program evaluators, select providers and evaluators, review and provide feedback on periodic reports from the Belltown and Skyway Operational Groups[1], make criminal justice and human services system data available for comparison and evaluative purposes, and provide policy guidance and administrative oversight for the LEAD program's operation and evaluation. The Coordinating Group will select a non-government fiscal sponsor to receive and administer the program's funding from private donors.

MOU Signatories' Individual Statements of Intent

The parties signing this Memorandum of Understanding ("MOU") specifically state their respective intents and commitments as follows:

[1] The Belltown and Skyway Operational Groups are populated by representatives of the policing and prosecutorial agencies having jurisdiction over the respective communities, each neighborhood's LEAD Community Advisory Board, and at least one of the organizations providing technical assistance to the LEAD program (The Defender Association or ACLU of Washington). Representatives of the service providers selected for each community will be added after selection. The Operational Groups have primary responsibility for developing and amending the Referral and Diversion Protocols for Belltown and Skyway, for staffing program participants' cases per the Protocols, and for providing periodic reports on resource utilization and participants' progress to the Coordinating Group.

1. **The Mayor's Office** is fully committed to the LEAD model. Over the three decades of the "War on Drugs," it has become apparent that an approach relying solely on using drug laws to jail and prosecute drug-involved individuals has resoundingly negative effects in terms of both justice and public safety, in Seattle and across the country. In 2006, the City initiated a number of pilot programs aimed to address the root causes of drug-related crime: addiction, lack of housing and employment, and lack of access to mental health services to name just a few. LEAD continues this model, and expands it to include partnership with law enforcement and access to a broader array of services. We are hopeful that LEAD may become the cornerstone of Seattle's drug enforcement strategy, and that it might help shift the nationwide paradigm from one that rends communities to one that helps to rebuild them.

   The Mayor's office will commit staff to the LEAD Coordinating Group and will look for opportunities to achieve synergies with employment, housing and other initiatives undertaken by the City of Seattle that may be appropriate fits for some LEAD participants.

2. King County, through its Countywide Strategic Plan, is committed to the goals of supporting safe communities and accessible justice systems for all, and promoting opportunities for all communities and individuals to realize their full potential.

   The King County Executive believes the LEAD pilot project furthers those goals. **The King County Executive's Office** (KCEO) has therefore committed to participate in the LEAD Program on both an evaluation and policy level. To that end, the KCEO will provide the following staffing to the program:

At an evaluation level, the KCEO will assign a senior analyst, knowledgeable in criminal justice programs and program data collection and evaluation, to assist the LEAD project evaluator with the collection of data from King County's information systems.

At a policy level, the King County Executive's Law and Justice Policy Advisor, or other designee as appointed by the King County Executive, shall serve on the LEAD Coordinating Group.

3. **The Seattle City Attorney's Office** is committed to the implementation of the LEAD program model at both the operational and policy levels. While the City Attorney does not prosecute felony drug offenses, our office handles a wide variety of misdemeanor cases that are associated with street-level drug dealing (e.g. car prowls, trespass, theft, assault, harassment, etc.). If the LEAD program is successful at transitioning street-level drug dealers and users away from the drug trade, there will be a significant public safety benefit in the community as the crimes associated with the drug activity are reduced.

   The City Attorney has a precinct liaison attorney who advises the West Precinct Captain on legal issues, policy matters and criminal investigations. This attorney will play an integral role in developing SPD procedures and policies for the LEAD program. He will also monitor and troubleshoot program issues as they arise. The Director of the Government Affairs Section will work on the policy team to ensure that the overall goals of the program are achieved.

Though they will be informed by the LEAD Operational Groups' staffing recommendations regarding individual program participants, the King County prosecutor and the Seattle City Attorney's Office retain ultimate and exclusive authority to make filing decisions in all cases.

4. **The King County Prosecutor's Office** (PAO) has committed to participate in the LEAD Program on both an operational and policy level. The PAO will provide the following staffing to the program when practicable:

   The PAO will have a deputy prosecuting attorney (DPA) knowledgeable in Washington State's drug laws, search and seizure case law, local, state and federal criminal history records, State Department of Corrections records, warrant records, and the ability to make criminal offense filing decisions, committed to participate in the case review process. The PAO will also provide paralegal services in support of the DPA's work. The work of the DPA and Paralegal will provide operational support to the program.

   At a policy level, the Deputy Chief of Staff of the PAO, or other designee as appointed by the elected Prosecuting Attorney, shall serve on the LEAD Coordinating Group. The Deputy Chief or other designee will serve on the Coordinating Group as long as it exists or unless and until the PAO withdraws from the LEAD Program.

   Though they will be informed by the LEAD Operational Groups' staffing recommendations regarding program participants, the King County prosecutor and

the Seattle City Attorney's Office retain ultimate and exclusive authority to make filing decisions in all cases.

5. **The Seattle Police Department** (SPD) has committed to participate in the LEAD Program on both an operational and policy level. The SPD will provide the following staffing to the program:

   The SPD will assign several personnel to this initiative including: several specially trained patrol/anti-crime team (ACT) officers who regularly work the Belltown area, as the initial "beta/fidelity working group" who will receive additional focused training on the LEAD referral process; and an officer who works jointly with the State Department of Corrections Neighborhood Correction Initiative (NCI) and who is knowledgeable in Washington State's drug laws, search and seizure case law, local, state and federal criminal history records, State Department of Corrections records, warrant records, and the ability to make street level decisions on where to direct the low-level drug offenders. The SPD will also provide the part-time services of a West Precinct sergeant and a lieutenant who will ensure that officers working the "street" portion of the initiative remain focused on the components of this initiative while assigned to it.

   At a policy level, an Assistant Chief (Jim Pugel) and a Captain (Steve Brown) shall serve on the LEAD Coordinating Group. These representatives will serve on the Coordinating Group as long as it exists or unless and until SPD withdraws from the LEAD Program.

6. **Sheriff Sue Rahr and the King County Sheriff's Office** are pleased to participate in the Law Enforcement Assisted Diversion Program in partnership with TDA, the King County Prosecutor's Office, the Seattle Police Department and all of those committed to this project. We will support this participation at both the policy and operational levels.

   At the operational level a captain assigned to the West Precinct Command will provide management-level input to structuring the policies and procedures. That captain will also oversee implementation through the first-line supervisors to the patrol deputies and detectives actually making the contacts and referrals.

   At the policy level, the West Precinct Major (or other designee of the Sheriff) will be a member of the LEAD Coordinating Group, offering the perspective and support of the Sheriff and her Executive Leadership Team. It is recognized that the program in the unincorporated areas may differ in some respects from the Seattle city implementation and operation. But we support the same overarching program goals and we desire the same positive outcomes in the lives of those referred to the program and in the communities impacted by public safety issues.

7. **The Defender Association/Racial Disparity Project** will dedicate multiple FTEs to all aspects of LEAD project management, resource development, stakeholder coordination and community outreach. TDA/RDP will serve as liaison between the fiscal sponsor, the program funders, the contract service providers, the Coordinating Group, the community advisory groups and the operational work groups. TDA/RDP, with other partners, will advocate for fidelity to agreed protocols and core principles

of LEAD. TDA/RDP, with other partners, will assist in communicating about the process of creating and operating LEAD with interested policymakers and community leaders in other jurisdictions.

8. **The American Civil Liberties Union (ACLU) of Washington** is committed to replacing reliance on criminal sanctions with approaches that treat drug abuse as a public health concern and at the same time respect civil liberties, reduce incarceration, and promote racial justice. The ACLU of Washington maintains a Drug Policy Project whose professional staff possess significant relevant experience.

   The ACLU of Washington is committed to the success of the LEAD project within its drug policy-related work. Its drug policy staff will assist the LEAD project with advocacy, document drafting, stakeholder consultation, troubleshooting, and technical assistance. The drug policy staff may also seek the assistance of the affiliate's communication department to consult on media relations and the field department for guidance on outreach and coalition building efforts.

LEAD Coordinating Group

The Coordinating Group's membership shall consist of representatives from the following entities and organizations:

1. Seattle Office of the Mayor;
2. King County Executive Office;
3. Seattle City Council;
4. King County Council;
5. Seattle City Attorney's Office;

6. King County Prosecuting Attorney's Office;
7. Seattle Police Department;
8. King County Sheriff's Office;
9. Belltown LEAD Community Advisory Board;
10. Skyway LEAD Community Advisory Board;
11. The Defender Association, through its Racial Disparity Project; and
12. ACLU of Washington, through its Drug Policy Project.

Additional member entities and organizations may be added to the Coordinating Group upon unanimous consent of the existing members.

B. **Governance.** Participation in the LEAD Coordinating Group is voluntary, and any member may withdraw unilaterally at any time for any reason. This MOU does not amend any law or ordinance; nor does it create any binding obligation on the part of any signatory. This MOU simply memorializes the intent of the Coordinating Group's members in participating in this demonstration project and describes the responsibilities they understand to be accepting through their participation.

All decisions of the Coordinating Group will be made by modified consensus. For purposes of this MOU, "modified consensus" means a resolution that is acceptable to all participants even if not ideal to one or more.

Each member organization shall designate one representative for purposes of determining consensus in Coordinating Group decisions, but multiple representatives from each organization may attend meetings and participate in discussions.

C. **Responsibilities.** The role of the Coordinating Group is to make policy-level decisions regarding the LEAD program and to provide periodic administrative oversight of the program. Specific responsibilities include, but are not limited to, the following:

1. Review of LEAD Referral and Diversion Protocols;
2. Selection of a fiscal sponsor to receive and administer private funding granted for LEAD operation and evaluation;
3. Oversight, advisement, and direction of fiscal sponsor pursuant to grant agreements;
4. Collaboration on grant applications for LEAD operation and evaluation;
5. Approval of RFPs for LEAD service provision and evaluation;
6. Review of RFP applications and selection of service providers and evaluators;
7. Making available criminal justice and human services system data for comparison and evaluative purposes;
8. Oversight of LEAD implementation, including regular review of reports from the Belltown and Skyway Operational Groups, contract compliance of service providers and evaluators, and solicitation and review of community feedback; and
9. Modification of service provision, or evaluation criteria and process, as needed.

The Defender Association and ACLU of Washington will provide staffing support through document drafting, stakeholder consultation, troubleshooting, and technical assistance to the Belltown and Skyway Operational Groups, but will have no decision-making authority except as members of the Coordinating Group.

This MOU may be signed in counterparts and shall be effective as of the date it is signed by all parties. No amendment or modification of this MOU will have effect unless it is made in writing and agreed to by all signatories or their successors.

Mike McGinn
Seattle Mayor

Date: 10-14-10

Dow Constantine
King County Executive

Date: 9.16.10

Peter Holmes
Seattle City Attorney

Date: 10-4-2010

Dan Satterberg
King County Prosecutor

Date: 9/23/10

for **John Diaz**
Chief of Police
Seattle Police Department

Date: 9/21/10

Sue Rahr
King County Sheriff

Date: 10/1/10

Floris Mikkelsen
Director, The Defender Association

Date: 9/22/2010

Kathleen Taylor
Executive Director, ACLU of Washington

Date: 10/15/2010