

Vivian King  
Chief of Staff



Criminal Justice Center  
1201 Franklin, Suite 600  
Houston, Texas 77002-1901

**HARRIS COUNTY DISTRICT ATTORNEY  
KIM K. OGG**

Law Enforcement Leaders,

As you all know, officer safety concerns are driving changes in the operations and protocol used in the investigation and prosecution of drug crimes by many Harris County criminal justice agencies right now.

The Pasadena Police Department recently ended "field testing" in all drug cases, forgoing the immediate arrest and presentation of charges based on warrantless arrests of drug offenders at the Harris County District Attorney's Office (HCDAO) Intake Division, opting instead to seek "To Be" warrants once they receive lab results in their cases.

The Houston Police Department has just advised us that they too intend to halt "field testing" of drug cases, effective midnight, Saturday, July 15, 2017.

Given the danger that potent, lethal drugs such as Fentanyl and Carfentanil present to law enforcement officers, these law enforcement agency leaders have already judged the risks of "field testing" narcotics too high. See

<https://www.dea.gov/divisions/hq/2016/hq092216.shtml>. Several jurisdictions around the country have taken similar steps. In checking with our local Forensic Institutes (both Harris County labs), they concur that the risk to law enforcement is clear and present and that the practice of "field testing" narcotics should end. We agree.

**The purpose of this communication is to inform you about imminent changes to be made by the HCDAO as a result of this health and safety threat to law enforcement. Effective midnight, Saturday, July 15, 2017, the Intake Division will begin accepting misdemeanor and felony drug cases without "field test" results.**

Continuation of the use of narcotics field tests by your employees is your decision, but it is important for you to know that the HCDAO Intake Division will no longer require such testing for acceptance of charges.

To support the acceptance of charges for warrantless drug arrests, the HCDAO Intake Division will continue to require important facts supporting criminal charges to be

articulated by the arresting officer verbally to the Assistant District Attorney and in writing on the DIMS summary. Factors to be considered and documented in support of probable cause for arresting an individual for possession of a controlled substance (without a field test) are:

- Contraband Color: describe the color and is it consistent with past experience of officer
- Contraband Texture: describe the texture and is it consistent with past experience of officer
- Contraband Packaging: is it the type known to be used in drug trafficking and by drug users
- Presence of Drug Paraphernalia with the Contraband
- Incriminating or identifying statements by the defendant or witnesses as to the identity of the Contraband
- Location of the Contraband: in a defendant's actual possession vs. hidden location
- Odors in immediate vicinity of the Contraband, chemical or plant
- Furtive movements of the defendant
- Demeanor, nervousness of the defendant
- Area where arrest was made a high crime area known for narcotics use
- Prior arrests for PCS by the arresting officer in which (s)he made identifications of Contraband which were confirmed by a lab
- Prior arrests/convictions of the Defendant for possession or delivery of a controlled substance.

Additional sources of information about drug identification are also readily available to the arresting officer: the first source is a Drug Identification Field Guide compiled by the Director of the Houston Forensic Science Center. This guide can be made available by your agency to your officers. The second source can be an experienced or specialized officer who can utilize his experience, training and expertise to visually identify the Contraband.

An example of an appropriate DIMS Summary to be used in such cases is:

"Based on \_\_\_\_\_ color, \_\_\_\_\_ texture, \_\_\_\_\_ packaging and context, and prior training and experience involving narcotics, your Affiant believes that the substance seized is \_\_\_\_\_. Your Affiant showed the substance to Narcotics

Officer \_\_\_\_\_, who advised your Affiant that he has conducted numerous narcotics investigations and has observed \_\_\_\_\_ on numerous prior occasions, his identity of this substance in the past has been verified by subsequent laboratory analysis of said controlled substance and he believes that the seized substance is \_\_\_\_\_. Your Affiant compared the substance to images contained in a narcotics field guide approved by the Harris County Forensic Science Center, and your Affiant observed that the seized substance is consistent with the images and description of \_\_\_\_\_ in field guide.” Other facts should be added when they exist.

In the event that the suspicious substance resembles more than one narcotic, officers should list all of the possible substances while being careful to keep the number as few and as narrow as the facts and the context supports. In the event that all the possible narcotics are within the same penalty group, officers should also state that fact in the DIMS summary. In the event that all the possible narcotics are in different penalty groups, officers should also state those different penalty groups in the DIMS summary.

Finally, should a magistrate or judge rule that a warrantless arrest without a field test does NOT support probable cause, the defendant will be released and the HCDAO will draft a “To Be” warrant for the offender at the request of the investigating agency once the contraband has been tested by a lab.

Please know that your law enforcement officers' safety is a high priority for me as your District Attorney. While I know that the dynamics of our profession are continually evolving, I remain confident that together we can protect and serve the public safely and effectively.

Please contact me at your earliest convenience with any questions, concerns or other information you believe important to this important policy change. I will keep you informed of other developments as they arise.

Sincerely,

Kim K. Ogg