

David Mitcham  
First Assistant/Chief of Courts

Vivian King  
First Assistant/Chief of Staff



Harris County District Attorney's Office  
1201 Franklin Street, Suite 600  
Houston, TX 77002

## HARRIS COUNTY DISTRICT ATTORNEY KIM OGG

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Law Enforcement Leaders,

Due to our concern about the increasing public safety threat of fentanyl to the civilian public and law enforcement, effective 12:00 a.m., August 27, 2023, the Harris County District Attorney's Office will now evaluate every drug possession case, including those cases where the suspect possesses less than 4 grams of a controlled substance, for the direct filing of charges.

As always, those charges must be based on probable cause. While lab tests are not available to officers in the field, nor are field tests safe given the extreme danger posed by fentanyl, probable cause may be established in such cases through the expert testimony of two officers with drug enforcement experience. Fentanyl, by itself and mixed with other controlled substances, appears to be a component of nearly every controlled substance case our Intake Division files.

The direct filing of these drug possession cases may contribute to extended wait times at Intake, due to staffing shortages created by underfunding of the District Attorney's Office, specifically to the Intake Division. Additionally, because of backlogs at the City, County and DPS-run labs, some Harris County courts have regularly dismissed cases that have not been indicted before the 180<sup>th</sup> day after the defendant has been detained or released on bail, pursuant to Art. 32.01 of the Texas Code of Criminal Procedure. (A drug case should not be indicted without a final lab analysis, because the State cannot prove the content of the contraband drug nor the weight.) Regardless, the protection of our citizenry and first responders must take precedence.

This notification revises a communication released by the Harris County District Attorney's Office's letter dated April 11, 2023.

Please remind all officers filing charges at the District Attorney's Office that Art. 2.1397(b) of the Texas Code of Criminal Procedure still requires the law enforcement agency filing the charges to submit a written statement acknowledging that all documents, items, and information in its possession that are required to be disclosed to the defendant under Art. 39.14 TCCP have been disclosed to the attorney representing the State. This is an ongoing duty. **Specifically, it is the law enforcement agency's responsibility to submit the seized substances to the appropriate lab and to request testing and analysis, for presentation of the case to a grand jury.**