



SEATTLE CITY COUNCIL

Public Safety and Human Services Committee

Agenda - Revised

Tuesday, September 14, 2021

9:30 AM

Remote Meeting. Call 253-215-8782; Meeting ID: 586 416 9164; or
Seattle Channel online.

Lisa Herbold, Chair
M. Lorena González, Vice-Chair
Andrew J. Lewis, Member
Tammy J. Morales, Member
Kshama Sawant, Member
Alex Pedersen, Alternate

Chair Info: 206-684-8801; Lisa.Herbold@seattle.gov

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September 14, 2021 - 9:30 AM

Meeting Location:

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Committee Website:

<http://www.seattle.gov/council/committees/public-safety-and-human-services>

This meeting also constitutes a meeting of the City Council, provided that the meeting shall be conducted as a committee meeting under the Council Rules and Procedures, and Council action shall be limited to committee business.

In-person attendance is currently prohibited per Washington State Governor's Proclamation 20-28.15, until the COVID-19 State of Emergency is terminated or Proclamation 20-28 is rescinded by the Governor or State legislature. Meeting participation is limited to access by telephone conference line and online by the Seattle Channel.

Register online to speak during the Public Comment period at the 9:30 a.m Public Safety and Human Services Committee meeting at <http://www.seattle.gov/council/committees/public-comment>.

Online registration to speak at the Public Safety and Human Services Committee meeting will begin two hours before the 9:30 a.m. meeting start time, and registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

Submit written comments to Councilmember Herbold at Lisa.Herbold@seattle.gov

Sign-up to provide Public Comment at the meeting at <http://www.seattle.gov/council/committees/public-comment>

Watch live streaming video of the meeting at <http://www.seattle.gov/council/watch-council-live>

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Please Note: Times listed are estimated

A. Call To Order

B. Approval of the Agenda

C. Public Comment

(20 minutes)

D. Items of Business

1. Pay-up Policy Proposal - Draft Legislation

Supporting Documents: [Draft Legislation Presentation](#)

Briefing and Discussion (30 minutes)

Presenter: Karina Bull, Council Central Staff

2. Pre-Filing Diversion Racial Equity Toolkit Report for Adults 25 years Old and Older

Supporting Documents: [Pre-Filing Diversion Racial Equity Toolkit Report Community Report](#)

Briefing and Discussion (20 minutes)

Presenters: City Attorney Pete Holmes and Jenna Robert, City Attorney's Office; Daicia Mestas, CHOOSE 180

3. [CB 120142](#) **AN ORDINANCE relating to the Seattle Police Department; prohibiting training, exchanges, and partnerships with certain governments; and adding a new Section 3.28.141 to the Seattle Municipal Code.**

*Supporting
Documents:*

[Summary and Fiscal Note](#)
[Central Staff Memo](#)

Briefing, Discussion, and Possible Vote (20 minutes)

Presenters: Ann Gorman and Greg Doss, Council Central Staff

E. Adjournment



Legislation Text

File #: Inf 1870, **Version:** 1

Pay-up Policy Proposal - Draft Legislation

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to app-based workers labor standards; establishing minimum labor and compensation standards for app-based workers working in Seattle; establishing flexibility, transparency, and notice requirements for network companies; prescribing remedies and enforcement procedures; amending Sections 3.02.125, 3.15.000, and 6.208.020 of the Seattle Municipal Code; and adding a new Title 8 and Chapter 8.37 to the Seattle Municipal Code.

..body

WHEREAS, an estimated 40,000 app-based workers work in Seattle, including Black, Indigenous, People of Color (BIPOC) workers, immigrants, workers with disabilities, LGBTQ+ workers and single parents; and

WHEREAS, the community depends on app-based workers to provide valuable services but network companies often pay app-based workers subminimum wages despite the promise of good wages, flexibility, and accessibility; and

WHEREAS, the definitions of “employee” and “employer” in local, state, and federal laws are broad, but network companies rely on business models that treat app-based workers as “independent contractors,” thereby creating barriers for app-based workers to access employee protections such as minimum wage, unemployment benefits, workers compensation, paid family and medical leave, and protection against discrimination; and

WHEREAS, Black and Latinx workers are overrepresented among app-based workers, comprising almost 42 percent of app-based workers but less than 29 percent of the overall labor force, and are disproportionately deprived of core employee protections when network companies treat them as independent contractors; and

1 WHEREAS, BIPOC workers face unique barriers to economic insecurity and disproportionately
2 must accept low-wage, unsafe, and insecure working conditions; and

3 WHEREAS, BIPOC workers have long been heavily concentrated in exploitative industries; and

4 WHEREAS, the City is committed to ending racial disparities and achieving racial equity in
5 Seattle; and

6 WHEREAS, the City intends to address the inequities of app-based work by ensuring that such
7 workers are paid at least the City’s minimum wage plus reasonable expenses and all
8 required benefits, with meaningful transparency and the ability to exercise the flexibility
9 promised by app-based companies; and

10 WHEREAS, the City intends to set a clear, transparent, and enforceable minimum compensation
11 standard that is applicable regardless of the specific business model, technical function,
12 or administrative apparatus of any given network company; and

13 WHEREAS, the City intends to retain the current definitions of worker classification under
14 Seattle’s labor standards and does not intend to create a new classification of workers
15 distinct from employees or independent contractors; and

16 WHEREAS, the City intends to ensure that that all workers can benefit from the protections of
17 Seattle’s labor standards; and

18 WHEREAS, the City is a leader on wage, labor, and workforce practices that improve workers’
19 lives, support economic security, and contribute to a fair, healthy, and vibrant economy;
20 and

21 WHEREAS, establishing minimum labor and compensation requirements for app-based workers
22 requires appropriate action by the City Council; NOW, THEREFORE,

23 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

1 Section 1. The City Council (Council) finds and declares that:

2 A. App-based work is a growing source of income for workers in Seattle and across the
3 country.

4 B. In the exercise of The City of Seattle’s police powers, the City is granted authority to
5 pass regulations designed to protect and promote public health, safety, and welfare.

6 C. This ordinance protects and promotes public health, safety, and welfare by
7 establishing minimum labor and compensation standards for app-based workers.

8 D. Numerous studies suggest minimum labor and compensation standards benefit
9 employers and hiring entities by improving worker performance, reducing worker turnover, and
10 thereby improving productivity and the quality of the services provided by workers, including
11 app-based workers.

12 E. Many Seattle workers, including app-based workers, cannot fully participate in the
13 community’s dynamic civic life or pursue its myriad educational, cultural, and recreational
14 opportunities because they struggle to meet their households’ most basic needs.

15 F. Minimum labor and compensation standards promote the general welfare, health, and
16 prosperity of Seattle by ensuring that workers have stable incomes and can better support and
17 care for their families and fully participate in Seattle’s civic, cultural, and economic life.

18 G. Providing a minimum compensation standard for app-based workers would benefit the
19 Seattle economy by increasing app-based worker earnings and thereby boosting consumer
20 spending in Seattle and benefiting the economy overall.

21 Section 2. A new Title 8 is added to the Seattle Municipal Code as follows:

22 **TITLE 8 LABOR STANDARDS**

23 Section 3. A new Chapter 8.37 is added to the Seattle Municipal Code as follows:

1 **Chapter 8.37 APP-BASED WORKER MINIMUM COMPENSATION**

2 **8.37.010 Short title**

3 This Chapter 8.37 shall constitute the “App-based Worker Minimum Compensation Ordinance”
4 and may be cited as such.

5 **8.37.020 Definitions**

6 For purposes of this Chapter 8.37:

7 “Acceptance” means the initial communication from an app-based worker to a network
8 company that the app-based worker intends to complete an offer, including but not limited to
9 indicating acceptance through the worker platform.

10 “Adverse action” means reducing compensation; garnishing tips or gratuities; temporarily
11 or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable
12 work; terminating; deactivating; threatening; penalizing; retaliating; engaging in unfair
13 immigration-related practices; filing a false report with a government agency; or otherwise
14 discriminating against any person for any reason prohibited by Section 8.37.120. “Adverse
15 action” for an app-based worker may involve any aspect of the app-based worker’s work,
16 including compensation, work hours, volume and frequency of offers made available, desirability
17 and compensation rates of offers made available, responsibilities, or other material change in the
18 terms and conditions of work or in the ability of an app-based worker to perform work. “Adverse
19 action” also includes any action by the network company or a person acting on the network
20 company’s behalf that would dissuade a reasonable person from exercising any right afforded by
21 this Chapter 8.37.

22 “Agency” means the Office of Labor Standards and any division therein.

1 “Aggrieved party” means an app-based worker or other person who suffers tangible or
2 intangible harm due to a network company’s or other person's violation of this Chapter 8.37.

3 “App-based worker” means a person who has entered into an agreement with a network
4 company governing the terms and conditions of use of the network company’s worker platform
5 or a person accepting offers to perform services for compensation via a network company’s
6 worker platform.

7 “Application dispatch” means technology that allows customers to directly request
8 dispatch of app-based workers for provision of services and/or allows app-based workers or
9 network companies to accept requests for services and payments for services via the internet
10 using mobile interfaces including but not limited to, smartphone and tablet applications.

11 “Associated cost factor” means the additional percentage of the minimum wage
12 equivalent rate that reasonably accounts for operational costs borne by app-based workers, which
13 include but are not limited to the following:

- 14 1. Employer-side payroll taxes that app-based workers must pay;
- 15 2. Cost of participation in paid family and medical leave insurance;
- 16 3. Savings in lieu of state-provided unemployment insurance;
- 17 4. Worker’s compensation insurance;
- 18 5. Business taxes that app-based workers must pay;
- 19 6. Business licensing fees that app-based workers must pay;
- 20 7. Cost of miscellaneous expenses such as purchase of cellular phones, data plans,
21 and other administrative equipment required for work; and
- 22 8. Any other cost the Director determines is necessary to further the purposes of
23 this Chapter 8.37.

1 “Associated mileage factor” means the additional percentage of the mileage rate that
2 reasonably compensates app-based workers for all miles traveled that are necessary to conduct
3 app-based work, which may include but is not limited to the following:

4 1. Distance traveled after the completion of an offer to relocate to locations where
5 additional offers are likely to be available or to return to the starting location; and/or

6 2. Distance traveled to locations for rest breaks, meal breaks, restroom access, and
7 administrative needs.

8 “Associated time factor” means the additional percentage of the minimum wage
9 equivalent rate that reasonably accounts for the time that app-based workers must spend working
10 or engaged to wait for work without compensation to perform app-based work, including but not
11 limited to the following:

12 1. Reviewing offers;

13 2. Communicating with network companies and customers;

14 3. Relocating in anticipation of future offers;

15 4. Conducting administrative tasks; and

16 5. Taking rest breaks.

17 “Cancellation with cause” means acceptance of an offer that an app-based worker
18 cancelled with cause pursuant to subsection 8.37.080.C.

19 “City” means the City of Seattle.

20 “Compensation” means the total amount of payment owed to an app-based worker by
21 reason of performing work facilitated by the network company, including but not limited to
22 network company payments and tips earned from customers.

1 “Creative services or works” means labor that results in or contributes to the creation of
2 original works, as well as the works resulting from such labor. The term “creative services or
3 works” includes but is not limited to fiction and non-fiction writing, art, photography, graphic
4 design, marketing, and related consulting services.

5 “Customer” means end customer and/or paying customer.

6 “Director” means the Director of the Office of Labor Standards or the Director's
7 designee.

8 “End customer” means the recipient of an online order.

9 “Engaged miles” means miles traveled during engaged time in a vehicle that the network
10 company does not own and maintain, or miles traveled during engaged time in a vehicle leased
11 by the network company to the app-based worker.

12 “Engaged time” means the period of time an app-based worker spends completing a
13 specific offer or any training program required by a network company.

14 1. For on-demand offers, “engaged time” commences upon the app-based
15 worker’s acceptance of the offer and ends upon the app-based worker’s completion of the offer,
16 cancellation of the offer by the network company or customer, or cancellation with cause of the
17 app-based worker’s acceptance of the offer pursuant to subsection 8.37.080.C.

18 2. For pre-scheduled offers, “engaged time” commences when the app-based
19 worker initiates performance of the offer or when the app-based worker is required to report to a
20 location designated in the offer and ends upon the app-based worker’s completion of the offer,
21 cancellation of the offer by the network company or customer, or cancellation with cause of the
22 app-based worker’s acceptance of the offer pursuant to subsection 8.37.080.C.

1 The Director may issue rules on “engaged time” for offers with non-compensable time, such as
2 sleep time or other periods of off-duty time.

3 “Franchise” means an agreement by which:

4 1. A person is granted the right to engage in the business of offering, selling, or
5 distributing goods or services under a marketing plan prescribed or suggested in substantial part
6 by the grantor or its affiliate;

7 2. The operation of the business is substantially associated with a trademark,
8 service mark, trade name, advertising, or other commercial symbol; designated, owned by, or
9 licensed by the grantor or its affiliate; and

10 3. The person pays, agrees to pay, or is required to pay, directly or indirectly, a
11 franchise fee.

12 “Front pay” means the compensation the app-based worker would earn or would have
13 earned if reinstated to their former position.

14 “Hearing Examiner” means the official appointed by the City Council and designated as
15 the Hearing Examiner under Chapter 3.02 or that person's designee (e.g., Deputy Hearing
16 Examiner or Hearing Examiner Pro Tem).

17 “Incentive” means a sum of money paid to an app-based worker upon completion of a
18 task, including but not limited to completing a certain number of offers, completing a certain
19 number of consecutive offers, completing an offer subject to a price multiplier or variable pricing
20 policy, making oneself available to review or accepting offers in a particular geographic location
21 during a specified period of time, or recruiting new app-based workers.

22 “Minimum wage equivalent rate” means the per minute equivalent of the “hourly
23 minimum wage” established for Schedule 1 employers in Chapter 14.19. In 2021 the “hourly

1 minimum wage” established for Schedule 1 employers in Chapter 14.19 is \$16.69 and the
2 resultant minimum wage equivalent rate is \$0.28.

3 “Network company” means an organization whether a corporation, partnership, sole
4 proprietor, or other form, operating in Seattle that uses an online-enabled application or platform,
5 such as an application dispatch system, to facilitate the provision of services for compensation by
6 app-based workers.

7 1. The term “network company” includes any such entity or person acting directly
8 or indirectly in the interest of a network company in relation to the app-based worker.

9 2. The term “network company” does not include:

10 a. An entity offering services that enable individuals to schedule
11 appointments with and/or process payments to users, when the entity in no manner engages in
12 additional intermediation of the relationships between parties to such transactions nor engages in
13 any oversight of service provision; or

14 b. An entity operating digital advertising and/or messaging platforms,
15 when the entity neither engages in intermediation of the payments or relationships between
16 parties to resulting transactions nor engages in any oversight of service provision.

17 “Network company payment” means the amount owed to an app-based worker by reason
18 of completing an offer facilitated by the network company, including but not limited to payment
19 for providing services, bonuses, incentives, and commissions.

20 “Offer” means one or more online orders presented to an app-based worker as one
21 opportunity for work that the app-based worker may accept or reject.

22 1. The term “offer” includes but is not limited to an opportunity to perform one or
23 more tasks or services, as well as an opportunity described via a worker platform as a shift, a

1 period of time to be spent engaged in service provision, or any other characterization of a
2 scheduled period of time in which the app-based worker agrees to work or make themself
3 available for work, and such a period of time shall be considered one offer.

4 2. The term “offer” includes pre-scheduled offers and on-demand offers.

5 “On-demand offer” means all offers that are not pre-scheduled offers.

6 “Online order” means an order for services that is placed through an online-enabled
7 application or platform, such as an application dispatch system, and that is facilitated by a
8 network company or placed by a network company for its own benefit. The term “online order”
9 does not include the following transactions:

10 1. Sale or rental of products or real estate;

11 2. Payment in exchange for a service subject to professional licensure that has
12 been listed by the Director pursuant to this Section 8.37.020;

13 3. Payment in exchange for services wholly provided digitally;

14 4. Payment in exchange for creative services or works; and

15 5. TNC dispatched trips, as defined in Section 14.33.020.

16 “Operating in Seattle” means, with respect to a network company, offering or facilitating
17 the opportunity to provide services for compensation using an online-enabled application or
18 platform, such as an application dispatch system, to any app-based worker, where such services
19 are performed in whole or in part in Seattle.

20 “Paying customer” means a person or entity placing an online order via a network
21 company’s online-enabled application or platform.

1 “Pre-scheduled offer” means an offer that is accepted by an app-based worker at least two
2 hours prior to when the app-based worker initiates performance and that meets the following
3 criteria:

- 4 1. The entire performance of the offer occurs in a single location;
- 5 2. The scheduled time of performance of the offer was directly negotiated
6 between the app-based worker and a customer; or
- 7 3. Performance of the offer begins at a facility operated by the network company and the
8 duration of performance is described as at minimum two hours in length.

9 “Rate of inflation” means 100 percent of the annual average growth rate of the bi-
10 monthly Seattle-Tacoma-Bellevue Area Consumer Price Index for Urban Wage Earners and
11 Clerical Workers, termed CPI-W, for the 12-month period ending in August, provided that the
12 percentage increase shall not be less than zero.

13 “Respondent” means the network company or any person who is alleged or found to have
14 committed a violation of this Chapter 8.37.

15 “Service subject to professional licensure” means a service that legally requires
16 authorization or certification for a regulatory purpose for an individual to engage in the service
17 as an occupation, trade, or business. The Director shall issue rules that establish a list of
18 professional licenses indicative of occupations or trades in which workers possess significant
19 bargaining power and influence over their compensation and conditions of work. In establishing
20 this list, the Director shall consider, at a minimum, the licensing requirements of the Washington
21 State Department of Licensing, the Washington State Bar Association, and the Washington
22 Medical Commission.

1 “Standard mileage rate” means the current standard mileage rate established by the
2 United States Internal Revenue Service (IRS) for calculation of the costs of operating an
3 automobile. For example, the 2021 mileage rate is \$0.56.

4 “Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in
5 recognition of some service performed for the customer by the app-based worker receiving the
6 tip.

7 “Unsealed” means unpackaged, visible within packaging, and/or in packaging that is not
8 designed to withstand shipment. The term “unsealed” includes but is not limited to bags, boxes,
9 or containers designed to allow customers to transport hot food or groceries to their homes.

10 “Worker platform” means the worker-facing application dispatch system software or any
11 online-enabled application service, website, or system, used by an app-based worker, that
12 enables the arrangement of services for compensation.

13 “Work performed in Seattle” means activities conducted by an app-based worker that
14 occur within the geographic boundaries of the City in furtherance of an offer.

15 1. The term “work performed in Seattle” includes any time spent on a commercial
16 stop in Seattle that is related to the provision of delivery or other services associated with an
17 offer.

18 2. The term “work performed in Seattle” does not include stopping for refueling,
19 stopping for a personal meal or errands, or time spent in Seattle solely for the purpose of
20 travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle
21 with no commercial stops in Seattle.

1 “Written or writing” means a printed or printable communication in physical or electronic
2 format including a communication that is transmitted through email, text message, or a computer
3 system, or is otherwise sent or maintained electronically, including via the worker platform.

4 **8.37.030 App-based worker coverage**

5 A. An app-based worker is covered by this Chapter 8.37 if the app-based worker
6 performs work in whole or in part in Seattle in furtherance of an offer facilitated by a network
7 company covered by this Chapter 8.37.

8 B. An app-based worker who is a covered employee under Chapter 14.19 for a covered
9 network company is not a covered app-based worker under this Chapter 8.37.

10 **8.37.040 Network company coverage**

11 A. For the purposes of this Chapter 8.37, covered network companies are limited to those
12 that facilitate work performed by 250 or more app-based workers worldwide regardless of where
13 those workers perform work, including but not limited to chains, integrated enterprises, or
14 franchises associated with a franchise or network of franchises that facilitate work performed by
15 250 or more app-based workers worldwide in aggregate.

16 B. To determine the number of app-based workers performing work for the current
17 calendar year:

18 1. The calculation is based upon the average number per calendar week of app-
19 based workers who worked for compensation during the preceding calendar year for any and all
20 weeks during which at least one app-based worker worked for compensation. For network
21 companies that did not have any app-based workers during the preceding calendar year, the
22 number of app-based workers hired for the current calendar year is calculated based upon the

1 average number per calendar week of app-based workers who worked for compensation during
2 the first 90 calendar days of the current year in which the network company engaged in business.

3 2. All app-based workers who worked for compensation shall be counted,
4 including but not limited to:

5 a. App-based workers who are not covered by this Chapter 8.37;

6 b. App-based workers who worked in Seattle; and

7 c. App-based workers who worked outside Seattle.

8 C. Separate entities that form an integrated enterprise shall be considered a single
9 network company under this Chapter 8.37. Separate entities will be considered an integrated
10 enterprise and a single network company under this Chapter 8.37 where a separate entity controls
11 the operation of another entity. The factors to consider in making this assessment include, but are
12 not limited to:

13 1. Degree of interrelation between the operations of multiple entities;

14 2. Degree to which the entities share common management;

15 3. Centralized control of labor relations;

16 4. Degree of common ownership or financial control over the entities; and

17 5. Use of a common brand, trade, business, or operating name.

18 **8.37.050 Minimum compensation**

19 A. For each offer resulting in work performed in Seattle, a network company shall
20 compensate app-based workers by providing at least the equivalent of:

21 1. The minimum per minute amount for engaged time under subsection
22 8.37.050.B.1 plus the minimum per mile amount for engaged miles under subsection
23 8.37.050.B.2; or

1 2. The minimum per offer amount under subsection 8.37.050.B.4, whichever
2 amount is greater.

3 B. Minimum payment

4 1. Per minute amount. For each minute of engaged time, a network company
5 shall compensate app-based workers at least the equivalent of the total of the minimum wage
6 equivalent rate multiplied by the associated cost factor multiplied by the associated time factor.
7 Subject to the provisions in subsection 8.37.050.C, the per minute amount is \$0.40.

8 a. Associated cost factor. Subject to the provisions in subsection
9 8.37.050.C, the associated cost factor is 1.13.

10 b. Associated time factor. The associated time factor is 1.21.

11 2. Per mile amount. For each engaged mile traveled, a network company shall
12 compensate app-based workers at least the equivalent of the standard mileage rate multiplied by
13 the associated mileage factor. Subject to the provisions in subsection 8.37.050.C, the per mile
14 amount is \$0.70.

15 a. Associated mileage factor. The associated mileage factor is 1.25.

16 3. The calculations described in this subsection 8.37.050.B are expressed in
17 equation form as:

18 (Engaged minutes x minimum wage equivalent rate x associated cost factor x
19 associated time factor) + (engaged miles x standard mileage rate x associated mileage factor) =
20 minimum payment per offer.

21 The established current rates and factors result in the following calculation for
22 minimum required compensation:

1 (Engaged minutes x \$0.28 x 1.13 x 1.21) + (\$0.56 per engaged mile x 1.25) =
2 \$0.40/minute + \$0.70/mile.

3 4. Per offer amount. For each offer resulting in engaged time or engaged miles, a
4 network company shall compensate app-based workers a minimum per offer amount of at least
5 \$5.

6 a. Effective January 1, 20XX, the minimum per offer amount paid to an
7 app-based worker shall be increased on a percentage basis to reflect the rate of inflation and
8 calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine
9 the amount and file a schedule of such amount with the City Clerk.

10 5. Application of minimum compensation requirements

11 a. For the purposes of this subsection 8.37.050.B, “each offer” includes an
12 offer completed by the app-based worker, an offer cancelled by a customer or the network
13 company, an offer for which acceptance was cancelled with cause by the app-based worker
14 pursuant to subsection 8.37.080.C, and an offer that proves impossible to complete, including but
15 not limited to when the customer is not available to accept services. “Each offer” does not
16 include an offer cancelled without cause by the app-based worker.

17 b. If an app-based worker accepts a new offer during performance of a
18 previously accepted offer, and both offers are facilitated by the same network company, engaged
19 time and engaged miles accrued during any period of time in which performance of the offers
20 overlaps shall be subject to the minimum compensation requirements for a single offer under this
21 subsection 8.37.050.B.

22 c. If an offer is described via the worker platform as a shift, a specified
23 length of time to be spent engaged in service provision, or any other characterization of a

1 scheduled period of time in which the app-based worker agrees to work or make themselves
2 available for work, an offer is considered complete upon the expiration of the described period of
3 time, and the entire period of time described shall be subject to the minimum compensation
4 requirements under this subsection 8.37.050.B.

5 d. Application of the minimum per mile amount of compensation may be
6 waived for those pre-scheduled offers which do not require delivery, moving, or other activities
7 the nature of which require travel to complete.

8 e. If the network company does not monitor the time during which an app-
9 based worker commences, performs work in furtherance of, and/or completes a pre-scheduled
10 offer, the network company shall allow the app-based worker to self-report the engaged time
11 required to complete the pre-scheduled offer.

12 f. If the network company does not monitor the location of an app-based
13 worker while they are performing work in furtherance of a pre-scheduled offer, the network
14 company shall allow the app-based worker to self-report the engaged miles required to complete
15 the pre-scheduled offer.

16 g. If the network company does not monitor the app-based worker's time
17 and location and a pre-scheduled offer requires non-exclusive engaged time that is not
18 practicable to directly measure, the network company may list a time frame over which the
19 engaged time would occur, so long as: (1) the offer does not list the engaged time as being less
20 than an hour; and (2) performance of the offer allows the app-based worker to work on another
21 offer in the same time frame. Engaged time and miles on such offers must be self-reported by the
22 worker as in subsections 8.37.050.B.5.e and 8.37.050.B.5.f.

1 C. Adjustment of the associated cost factor, associated time factor, and standard mileage
2 rate

3 1. Adjustment of the associated cost factor. Beginning three years after the
4 effective date of this Chapter 8.37, the Director by rule may adjust the associated cost factor
5 annually, provided that this adjustment shall not result in reduction of the associated cost factor
6 below 1.13. If the Director determines adjustment of the associated cost factor is appropriate, the
7 Director shall consult the App-Based Workers Advisory Board and consider its
8 recommendations. In adjusting the associated cost factor, the Director shall consider relevant and
9 available sources of data, which may include, but are not limited to: app-based worker surveys,
10 data provided by network companies, data provided by app-based workers, data provided by
11 customers, data from other jurisdictions, data available through academic, policy, or community
12 based organizations, public testimony provided, and stakeholder interviews. The Director may
13 consider the following non-exhaustive list of factors or costs:

- 14 a. Employer-side payroll taxes that app-based workers must pay;
- 15 b. Participation in paid family and medical leave insurance;
- 16 c. Savings in lieu of state-provided unemployment insurance;
- 17 d. Worker's compensation insurance;
- 18 e. Business taxes that app-based workers must pay;
- 19 f. Business licensing fees that app-based workers must pay;
- 20 g. Miscellaneous expenses such as purchase of cellular phones, data plans,
21 and other administrative equipment required for work; and
- 22 h. Any other cost the Director determines is necessary to further the
23 purposes of this Chapter 8.37.

1 The Agency shall file a schedule of any adjustment(s) to the associated cost factor with the City
2 Clerk.

3 2. Adjustment to the associated time factor. Beginning three years after the
4 effective date of this Chapter 8.37, the Director by rule may adjust the associated time factor
5 annually, provided that this adjustment shall not result in reduction of the associated time factor
6 below 1.21. If the Director determines adjustment of the associated time factor is appropriate, the
7 Director shall consult the App-Based Workers Advisory Board and consider its
8 recommendations. In adjusting the associated time factor, the Director shall consider relevant
9 and available sources of data, which may include, but are not limited to: app-based worker
10 surveys, data provided by network companies, data provided by app-based workers, data
11 provided by customers, data from other jurisdictions, data available through academic, policy, or
12 community based organizations, public testimony provided, and stakeholder interviews. The
13 Director may consider the following non-exhaustive list of factors or actions that reasonably
14 account for the time that app-based workers must spend working or engaged to wait to work
15 without compensation to perform app-based work:

- 16 a. Reviewing offers;
- 17 b. Communicating with network companies and customers;
- 18 c. Relocating in anticipation of future offers;
- 19 d. Conducting administrative tasks; and
- 20 e. Taking rest breaks; and
- 21 f. Any other factor the Director determines is necessary to further the
- 22 purposes of this Chapter 8.37.

1 The Agency shall file a schedule of any adjustment(s) to the associated time factor with the City
2 Clerk.

3 3. Adjustment of the standard mileage rate. Effective January 1, 20XX, and
4 thereafter on January 1 of each year, the standard mileage rate for travel using a motor vehicle
5 shall equal the current standard mileage rate established by the IRS for calculation of the
6 deductible costs of operating an automobile. The Agency shall provide public notice, which may
7 include updates to the Agency’s website and outreach materials, of the applicable standard
8 mileage rate.

9 D. Deductions

10 1. A network company may only deduct compensation when the app-based
11 worker expressly authorizes the deduction in writing and does so in advance for a lawful purpose
12 for the benefit of the app-based worker. Any such authorization by an app-based worker must be
13 voluntary and knowing.

14 2. Neither the network company nor any person acting in the interest of the
15 network company may derive any financial profit or benefit from any of the deductions under
16 this subsection 8.37.050.D. For the purposes of this subsection 8.37.050.D, reasonable interest
17 charged by the network company, or any person acting in the interest of a network company, for
18 a loan or credit extended to the app-based worker is not considered to be of financial benefit to
19 the network company, or any person acting in the interest of a network company.

20 **8.37.060 Tip and incentive compensation**

21 A. Tips

22 1. A network company shall pay to its app-based workers all tips and gratuities.

1 2. Tips paid to an app-based worker are in addition to, and may not count towards,
2 the app-based worker’s minimum compensation under Section 8.37.050.

3 3. Tips paid to an app-based worker are in addition to, and may not count towards,
4 a guaranteed minimum amount of network company payment for an offer. A network company
5 may not alter network company payment to an app-based worker, regardless of whether the
6 amount has been advertised or guaranteed to the app-based worker, based upon the amount of
7 tips paid by customers.

8 4. Tips paid to an app-based worker are in addition to, and may not count towards,
9 an advertised or guaranteed incentive.

10 5. Tips paid to an app-based worker are in addition to, and may not count towards,
11 an advertised or guaranteed amount of compensation, including but not limited to compensation
12 per number of offers accepted or per hour in which an individual makes themselves available to
13 receive offers via the worker platform.

14 B. Incentives paid to an app-based worker are in addition to, and may not count towards,
15 the app-based worker’s minimum compensation under Section 8.37.050.

16 **8.37.070 Network company transparency**

17 A. Right to up-front information regarding offers

18 1. A network company shall provide an app-based worker with the following
19 information regarding an offer before the app-based worker is asked to accept or reject the offer:

20 a. A best estimate of the engaged time required to complete the offer. If it
21 would be impracticable for the network company to provide the best estimate, the app-based
22 worker and customer may mutually agree to a best estimate of engaged time required;

1 b. A best estimate of the engaged mileage required to complete the offer if
2 the offer requires delivery, moving, or other activities the nature of which require travel to
3 complete. If it would be impracticable for the network company to provide the best estimate, the
4 app-based worker and customer may mutually agree to a best estimate of engaged miles
5 required;

6 c. A guaranteed minimum amount of network company payment for the
7 offer that is based on the network company's best estimate of the required time and mileage and
8 that meets the minimum compensation requirements established in Section 8.37.050;

9 d. The amount of any tip that each customer has indicated they will
10 provide, if the network company's online-enabled application or platform enables customers to
11 tip in advance of completion of an online order, as well as a clear statement as to whether the
12 network company permits customers to modify or remove tips after performance;

13 e. The geographic location or locations where work in furtherance of the
14 offer will occur, including pick-up and drop-off locations for offers involving deliveries. A
15 location may be indicated by depicting a circle no greater than one-half mile in diameter in
16 which the location may be found;

17 f. When completion of an offer entails a stop or stops at specific retail,
18 restaurant, or other business establishments for the purpose of purchasing, renting, or otherwise
19 picking up items, the names of such businesses;

20 g. To the extent it is reasonably ascertainable, information regarding
21 physical labor required to complete the offer and accessibility at locations where work will be
22 performed, including but not limited to weights of any goods to be handled, numbers of flights of
23 stairs, and availability of elevators, ramps, and other conditions affecting accessibility. The

1 Director shall issue rules regarding the types of information required to be disclosed, the format
2 of provision of the information, and efforts to ascertain the information that would be considered
3 sufficient. Statements providing that an offer may entail certain physical requirements or may
4 lack certain accessibility options shall not be considered sufficient; and

5 h. To the extent it is reasonably ascertainable, information regarding the
6 contents of unsealed products and materials that the app-based worker is expected to handle,
7 when exposure to or handling of such products and materials may pose health risks or violate
8 personal beliefs. The Director shall issue rules regarding a list of products and materials subject
9 to disclosure requirements, the format of provision of the information, and efforts to ascertain the
10 information that would be considered sufficient. Statements providing that an offer may entail
11 handling certain products or materials shall not be considered sufficient.

12 2. An on-demand offer shall be made available for at least three minutes after the
13 app-based worker has been provided the information described in subsection 8.37.070.A.1.

14 3. If an offer entails fulfillment of multiple individual online orders, and the
15 network company lacks advance notice of each online order to provide the information in
16 subsections 8.37.070.A.1.g and 8.37.070.A.1.h, the network company shall provide the app-
17 based worker with such information prior to assigning them work in furtherance of each online
18 order.

19 4. Substantially and systematically underestimating the guaranteed minimum
20 amount of network company payment shall be considered a violation of this Chapter 8.37.

21 B. Within 24 hours of each offer completion or cancellation with cause, a network
22 company shall transmit an electronic receipt to the app-based worker that contains the following
23 information for each unique offer covered by this Chapter 8.37:

- 1 1. The total amount of engaged time;
- 2 2. The total amount of engaged miles;
- 3 3. The geographic location or locations where work occurred, including pick-up
- 4 and drop-off locations for offers involving deliveries. A location may be indicated by depicting a
- 5 circle no greater than one-half mile in diameter in which the location may be found;
- 6 4. The total amount charged to the paying customer excluding the cost of any
- 7 goods purchased;
- 8 5. Amount of any incentive pay;
- 9 6. Amount of network company payment paid to the app-based worker;
- 10 7. Itemized deductions;
- 11 8. Amount of compensation from tips;
- 12 9. Itemized access fees;
- 13 10. Total compensation after tips and deductions;
- 14 11. A description and amount of each fee collected from a paying customer,
- 15 business, and worker related to the online order and the amount of money retained by the
- 16 network company as a result of the order excluding the cost of any goods purchased; and
- 17 12. Pursuant to rules that the Director may issue, other information that is material
- 18 and necessary to effectuate the terms of this Chapter 8.37.

19 C. On a weekly basis, the network company shall provide written notice to the app-based
20 worker that contains the following information for offers covered by this Chapter 8.37 and which
21 were completed or cancelled with cause, as well as other engagement with the worker platform,
22 during the prior week:

- 23 1. The app-based worker's total amount of engaged time;

- 1 2. The app-based worker's total amount of engaged miles;
- 2 3. Total amount charged to paying customers served excluding the cost of any
- 3 goods purchased;
- 4 4. The app-based worker's total and net compensation, itemized by:
 - 5 a. Amount of compensation that is network company payment, as well as
 - 6 the method used to calculate payment, including but not limited to amount per minute or amount
 - 7 per mile, as well as any incentives and the basis for calculating the incentives;
 - 8 b. Amount of compensation from tips; and
 - 9 c. Amount of any deductions.
- 10 5. The information required in each receipt pursuant to subsection 8.37.070.B for
- 11 each offer the worker completed or cancelled with cause during the prior week; and
- 12 6. Pursuant to rules that the Director may issue, other information that is material
- 13 and necessary to effectuate the terms of this Chapter 8.37.
- 14 D. Within 24 hours of an online order's completion, a network company shall transmit an
- 15 electronic receipt to a paying customer that lists:
 - 16 1. The date and time of completion of the online order;
 - 17 2. The total amount paid to the network company, itemizing all charges and fees;
 - 18 3. Compensation paid to the app-based worker with tips separately itemized;
 - 19 4. A description and amount of each fee collected from a paying customer,
 - 20 business, and worker related to the online order and the amount of money retained by the
 - 21 network company as a result of the order; and
 - 22 5. Pursuant to rules that the Director may issue, other information that is material
 - 23 and necessary to effectuate the terms of this Chapter 8.37.

1 E. A network company shall ensure that its customer-facing websites, applications, and
2 platforms do not describe any fees or non-tip charges in a manner that might be reasonably
3 misconstrued as a tip, gratuity, or other payment to the app-based worker. Any interface for
4 accepting customer orders shall clearly reflect the amount of any tip paid to the app-based
5 worker.

6 F. A network company shall routinely and affirmatively transmit to the Agency such
7 records as required by rules issued by the Director. The Director shall have the authority to
8 require aggregated or disaggregated records regarding the availability of offers facilitated via its
9 worker platform to provide workers with information to make informed choices about platforms
10 on which they may seek work and to provide the public with information to assess the impact of
11 network companies.

12 1. Such records may include but are not limited to:

13 a. The amount of engaged time and engaged miles app-based workers
14 spent in furtherance of offers entailing work performed in Seattle within the past month;

15 b. The amount of time app-based workers spent logged in to the worker
16 platform while able to receive on-demand offers entailing work performed in Seattle;

17 c. The amount of network company pay and total amount of total
18 compensation app-based workers received for performing work in furtherance of offers entailing
19 work performed in Seattle within the past month;

20 d. The number of app-based workers who logged on to the worker
21 platform while able to receive on-demand offers entailing work performed in Seattle or
22 otherwise indicated availability to receive on-demand offers entailing work performed in Seattle;

1 e. The number of app-based workers who, for the first time, logged on to
2 the worker platform while able to receive on-demand offers entailing work performed in Seattle
3 or otherwise indicated availability to receive on-demand offers entailing work performed in
4 Seattle;

5 f. The number of app-based workers who accepted offers entailing work
6 performed in Seattle within the past month;

7 g. The number of offers entailing work performed in Seattle made
8 available to app-based workers within the past month; and

9 h. Any other records that the Director determines are material and
10 necessary to effectuate the purposes of this Chapter 8.37.

11 2. The Director shall issue rules governing the submission format, security, and
12 privacy protocols relating to the submission of network company records, to the extent
13 permitted by law.

14 G. A network company shall notify app-based workers via a message in the worker
15 platform at least 14 days prior to making a significant change to how network company payment
16 will be calculated.

17 **8.37.080 Flexibility**

18 A. A network company shall not implement, nor engage in any practices effectively
19 resulting in, the following actions or policies:

20 1. A requirement that an app-based worker to be logged into the network
21 company's worker platform during any specific dates or times of day or for any minimum
22 amounts of time;

1 2. A limitation of the amount of time an app-based worker may be logged into the
2 network company’s worker platform, except limitations on a maximum amount of consecutive
3 work time in order to protect worker and public safety;

4 3. Adverse action against an app-based worker based upon when the app-based
5 worker makes themselves available to work;

6 B. At their sole discretion, an app-based worker may accept or reject any individual offer,
7 any types of offers, and any number or proportion of offers. An app-based worker may indicate
8 rejection of an offer by declining to respond to the offer. A network company shall ensure that its
9 worker platform enables an app-based worker to communicate a rejection of each offer.

10 C. An app-based worker may cancel their acceptance of an offer with cause. Pursuant to
11 rules that the Director may issue, cancellation of an acceptance of an offer is a cancellation with
12 cause when any of the following conditions occur:

13 1. Information provided pursuant to subsection 8.37.070.A.1 was substantially
14 inaccurate, provided that a customer’s alteration of a tip amount shall not constitute grounds for
15 cancellation with cause;

16 2. The end customer is not present or fails to respond to communications from the
17 app-based worker, the end customer’s presence or response is required for the app-based work to
18 complete the offer, and the app-based worker has made attempts to contact and/or wait for the
19 end customer in accordance with an applicable network company policy, and as a result, the app-
20 based worker cannot complete the offer;

21 3. Timely completion of the offer has become impracticable or unsafe due to an
22 unforeseen obstacle or occurrence, including but not limited to a mechanical failure or accident
23 that has rendered an app-based worker’s automobile inoperable or unsafe to operate; or

1 4. The app-based worker makes a good faith complaint regarding sexual
2 harassment or discrimination under the procedures established pursuant to Section XX.XX.XX
3 that is alleged to have occurred during performance of the offer.

4 **8.37.100 Notice of rights**

5 A. Network companies shall provide each app-based worker with a written notice of
6 rights established by this Chapter 8.37. The Agency may create and distribute a model notice of
7 rights in English and other languages. However, network companies are responsible for
8 providing app-based workers with the notice of rights required by subsection 8.37.100.B, in a
9 form and manner sufficient to inform app-based workers of their rights under this Chapter 8.37,
10 regardless of whether the Agency has created and distributed a model notice of rights.

11 B. The notice of rights shall provide information on:

12 1. The right to the applicable minimum per minute amount, per mile amount, and
13 per offer amount guaranteed by this Chapter 8.37, including a clear statement of the current
14 applicable amounts;

15 2. The right to receive the information required to be disclosed by this Chapter
16 8.37 before accepting and after completing an offer;

17 3. The right to be protected from retaliation for exercising in good faith the rights
18 protected by this Chapter 8.37; and

19 4. The right to file a complaint with the Agency or bring a civil action for
20 violation of the requirements of this Chapter 8.37, including but not limited to a network
21 company or any person's failure to pay the minimum per minute amount, per mile amount, or per
22 offer amount, and a network company or other person's retaliation against an app-based worker
23 or other person for engaging in an activity protected by this Chapter 8.37.

1 C. Network companies shall provide the notice of rights required by subsection
2 8.37.100.B in an electronic format that is readily accessible to the app-based worker. The notice
3 of rights shall be made available to the app-based worker via smartphone application or online
4 web portal, in English and any language that the network company knows or has reason to know
5 is the primary language of the app-based worker. The Director may issue rules governing the
6 form and content of the notice of rights, the manner of its distribution, and required languages for
7 its translation.

8 **8.37.110 Network company records**

9 A. Network companies shall retain records that document compliance with this Chapter
10 8.37 for each app-based worker.

11 B. Network companies shall retain the records required by subsection 8.37.110.A for a
12 period of three years.

13 C. If a network company fails to retain adequate records required under subsection
14 8.37.110.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the
15 network company violated this Chapter 8.37 for the periods and for each app-based worker for
16 whom records were not retained.

17 **8.37.120 Retaliation prohibited**

18 A. No network company or any other person shall interfere with, restrain, or deny the
19 exercise of, or the attempt to exercise, any right protected under this Chapter 8.37.

20 B. No network company or any other person shall take any adverse action against any
21 person because the person has exercised in good faith the rights protected under this Chapter
22 8.37. Such rights include, but are not limited to, the right to make inquiries about the rights
23 protected under this Chapter 8.37; the right to inform others about their rights under this Chapter

1 8.37; the right to inform the person's network company, the person's legal counsel, a union or
2 similar organization, or any other person about an alleged violation of this Chapter 8.37; the right
3 to file an oral or written complaint with the Agency or bring a civil action for an alleged
4 violation of this Chapter 8.37; the right to cooperate with the Agency in its investigations of this
5 Chapter 8.37; the right to testify in a proceeding under or related to this Chapter 8.37; the right to
6 refuse to participate in an activity that would result in a violation of city, state or federal law; and
7 the right to oppose any policy, practice, or act that is unlawful under this Chapter 8.37.

8 C. No network company or any other person shall communicate to a person exercising
9 rights protected in this Section 8.37.120, directly or indirectly, the willingness to inform a
10 government worker that the person is not lawfully in the United States, or to report, or to make
11 an implied or express assertion of a willingness to report, suspected citizenship or immigration
12 status of an app-based worker or family member of an app-based worker to a federal, state, or
13 local agency because the app-based worker has exercised a right under this Chapter 8.37.

14 D. It shall be a rebuttable presumption of retaliation if a network company or any other
15 person takes an adverse action against a person within 90 days of the person's exercise of rights
16 protected in this Section 8.37.120. The network company may rebut the presumption with clear
17 and convincing evidence that the adverse action was taken for a permissible purpose.

18 E. Proof of retaliation under this Section 8.37.120 shall be sufficient upon a showing that
19 a network company or any other person has taken an adverse action against a person and the
20 person's exercise of rights protected in this Section 8.37.120 was a motivating factor in the
21 adverse action, unless the network company can prove that the action would have been taken in
22 the absence of such protected activity.

1 F. The protections afforded under this Section 8.37.120 shall apply to any person who
2 mistakenly but in good faith alleges violations of this Chapter 8.37.

3 G. A complaint or other communication by any person triggers the protections of this
4 Section 8.37.120 regardless of whether the complaint or communication is in writing or makes
5 explicit reference to this Chapter 8.37.

6 **8.37.125 Rulemaking authority**

7 The Director is authorized to administer and enforce this Chapter 8.37. The Director is
8 authorized to promulgate, revise, or rescind rules and regulations deemed necessary,
9 appropriate, or convenient to administer, evaluate and enforce the provisions of this Chapter
10 8.37 pursuant to Chapter 3.02, providing affected entities with due process of law and in
11 conformity with the intent and purpose of this Chapter 8.37. Any guidelines or rules
12 promulgated by the Director shall have the force and effect of law and may be relied on by
13 network companies, app-based workers, and other parties to determine their rights and
14 responsibilities under this Chapter 8.37.

15 **8.37.130 Enforcement power and duties**

16 The Agency shall have the power to administer and enforce this Chapter 8.37 and shall have
17 such powers and duties in the performance of these functions as are defined in this Chapter 8.37
18 and otherwise necessary and proper in the performance of the same and provided for by law.

19 **8.37.140 Violation**

20 The failure of any respondent to comply with any requirement imposed on the respondent under
21 this Chapter 8.37 is a violation.

22 **8.37.150 Investigation**

1 A. The Agency shall have the power to investigate any violations of this Chapter 8.37 by
2 any respondent. The Agency may prioritize investigations of workforces that are vulnerable to
3 violations of this Chapter 8.37. The Agency may initiate an investigation pursuant to Director
4 rules, including but not limited to situations when the Director has reason to believe that a
5 violation has occurred or will occur, or when circumstances show that violations are likely to
6 occur within a class of network companies or businesses because the workforce contains
7 significant numbers of app-based workers who are vulnerable to violations of this Chapter 8.37
8 or the workforce is unlikely to volunteer information regarding such violations. An investigation
9 may also be initiated through the receipt by the Agency of a report or complaint filed by an app-
10 based worker or other person.

11 B. An app-based worker or other person may report to the Agency any suspected
12 violation of this Chapter 8.37. The Agency shall encourage reporting pursuant to this Section
13 8.37.150 by taking the following measures:

14 1. The Agency shall keep confidential, to the maximum extent permitted by
15 applicable laws, the name and other identifying information of the app-based worker or person
16 reporting the violation. However, with the authorization of such person, the Agency may disclose
17 the app-based worker's or person's name and identifying information as necessary to enforce this
18 Chapter 8.37 or for other appropriate purposes.

19 2. The Agency may require the network company to post or otherwise notify other
20 app-based workers working for the network company that the Agency is conducting an
21 investigation. The network company shall provide the notice of investigation in a form, place,
22 and manner designated by the Agency. The Agency shall create the notice of investigation in
23 English and other languages.

1 3. The Agency may certify the eligibility of eligible persons for “U” Visas under
2 the provisions of 8 U.S.C. § 1184,p and 8 U.S.C. § 1101.a.15.U. This certification is subject to
3 applicable federal law and regulations, and Director rules.

4 C. The Agency's investigation shall commence within three years of the alleged violation.
5 To the extent permitted by law, the applicable statute of limitations for civil actions is tolled
6 during any investigation under this Chapter 8.37 and any administrative enforcement proceeding
7 under this Chapter 8.37 based upon the same facts. For purposes of this Chapter 8.37:

8 1. The Agency's investigation begins on the earlier date of when the Agency
9 receives a complaint from a person under this Chapter 8.37, or when the Agency provides notice
10 to the respondent that an investigation has commenced under this Chapter 8.37.

11 2. The Agency's investigation ends when the Agency issues a final order
12 concluding the matter and any appeals have been exhausted; the time to file any appeal has
13 expired; or the Agency notifies the respondent in writing that the investigation has been
14 otherwise resolved.

15 D. The Agency's investigation shall be conducted in an objective and impartial manner.

16 E. The Director may apply by affidavit or declaration in the form allowed under RCW
17 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring a network company
18 to produce the records required by Section 8.37.110, or for the attendance and testimony of
19 witnesses, or for the production of documents required to be retained under Section 8.37.110, or
20 any other document relevant to the issue of whether any app-based worker or group of app-based
21 workers received the information or other benefits required by this Chapter 8.37, and/or to
22 whether a network company has violated any provision of this Chapter 8.37. The Hearing
23 Examiner shall conduct the review without hearing as soon as practicable and shall issue

1 subpoena upon a showing that there is reason to believe that: a violation has occurred, a
2 complaint has been filed with the Agency, that circumstances show that violations are likely to
3 occur within a class of businesses because the workforce contains significant numbers of app-
4 based workers who are vulnerable to violations of this Chapter 8.37, the workforce is unlikely to
5 volunteer information regarding such violations, or the Agency has gathered preliminary
6 information indicating that a violation may have occurred.

7 F. A network company that fails to comply with the terms of any subpoena issued under
8 subsection 8.37.150.E in an investigation by the Agency under this Chapter 8.37 before the
9 issuance of a Director's Order issued pursuant to subsection 8.37.160.C may not use such records
10 in any appeal to challenge the correctness of any determination by the Agency of liability,
11 damages owed, or penalties assessed.

12 G. In addition to other remedies, the Director may refer any subpoena issued under
13 subsection 8.37.150.E to the City Attorney to seek a court order to enforce any subpoena.

14 H. Where the Director has reason to believe that a violation has occurred, the Director
15 may order any appropriate temporary or interim relief to mitigate the violation or maintain the
16 status quo pending completion of a full investigation or hearing, including but not limited to a
17 deposit of funds or bond sufficient to satisfy a good-faith estimate of compensation, interest,
18 damages, and penalties due. A respondent may appeal any such order in accordance with Section
19 8.37.180.

20 **8.37.160 Findings of fact and determination**

21 A. Except when there is an agreed upon settlement, the Director shall issue a written
22 determination with findings of fact resulting from the investigation and statement of whether a

1 violation of this Chapter 8.37 has or has not occurred based on a preponderance of the evidence
2 before the Director.

3 B. If the Director determines that there is no violation of this Chapter 8.37, the Director
4 shall issue a “Determination of No Violation” with notice of an app-based worker’s or other
5 person’s right to appeal the decision, pursuant to Director rules.

6 C. If the Director determines that a violation of this Chapter 8.37 has occurred, the
7 Director shall issue a “Director's Order” that shall include a notice of violation identifying the
8 violation or violations.

9 1. The Director’s Order shall state with specificity the amounts due under this
10 Chapter 8.37 for each violation, including payment of unpaid compensation, liquidated damages,
11 civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section
12 8.37.170.

13 2. The Director's Order may specify that civil penalties and fines due to the
14 Agency can be mitigated for respondent's timely payment of remedy due to an aggrieved party
15 pursuant to subsection 8.37.170.A.4.

16 3. The Director’s Order may specify that civil penalties and fines are due to the
17 aggrieved party rather than due to the Agency.

18 4. The Director's Order may direct the respondent to take such corrective action as
19 is necessary to comply with the requirements of this Chapter 8.37, including but not limited to
20 monitored compliance for a reasonable time period.

21 5. The Director's Order shall include notice of the respondent's right to appeal the
22 decision pursuant to Section 8.37.180.

23 **8.37.165 Complaint procedure**

1 A. The Agency shall have the power to respond to any violations of this Chapter 8.37
2 with a complaint procedure.

3 B. The Agency may initiate a complaint procedure as an alternative enforcement method
4 to an investigation for responding to a report or complaint by any person of a violation of this
5 Chapter 8.37. The Director may issue rules for the complaint procedure, including but not
6 limited to rules to establish the timeline for sending the information required by subsection
7 8.37.165.D, determine the nature and content of information requested from the complainant and
8 network company, and indicate when the Agency may prioritize use of a complaint procedure
9 prior to an investigation or in lieu of an investigation. The Director may also establish other
10 enforcement methods to efficiently resolve violations of this Chapter 8.37.

11 C. The Agency may request the complainant to provide information pursuant to the
12 complaint procedure, including but not limited to:

- 13 1. Contact information for the app-based worker and network company; and
- 14 2. A statement describing the alleged violations of this Chapter 8.37.

15 D. The Agency may send notices to the network company and complainant, including but
16 not limited to:

17 1. Notice of the alleged violation(s). The Agency may send notice to the network
18 company of the alleged violation(s) of this Chapter 8.37. The Agency shall bear any cost of
19 sending such notice by certified mail or by other means incurring a cost to the Agency. This
20 notice may include but not be limited to:

- 21 a. Statement of the alleged violation(s) of this Chapter 8.37; and
- 22 b. Description of the remedies available to an app-based worker for
23 violation(s) of this Chapter 8.37;

1 2. Response from the network company. The Agency may request the network
2 company to send the Agency relevant information to respond to the alleged violation(s).

3 3. Notice to the complainant of the response from the network company. The
4 Agency may send a notice to the complainant of the response from the network company. This
5 notice to the complainant may include but not be limited to:

- 6 a. The response from network company, including any enclosures;
- 7 b. Information on the right to bring a civil action in a court of competent
8 jurisdiction;
- 9 c. Any other information about the status of the complaint; and
- 10 d. Information about the navigation program pursuant to Section 8.37.167.

11 4. Notice of no response. If the Agency receives no response from the network
12 company within the timeframe established by Director rule for subsection 8.37.165.D.3, the
13 Agency may send a notice of no response to the complainant and the network company, and may
14 include proof that the Agency previously sent notice of the alleged violation(s) to the network
15 company.

16 5. Notice of closure. The Agency may send the complainant and network
17 company notice of the Agency's completion of the complaint procedure and/or closure of the
18 case.

19 E. Upon satisfying the requirements of subsections 8.37.165.C and 8.37.165.D, the
20 Agency may close the case.

21 **8.37.167 Navigation program**

22 A. The Agency may establish a navigation program that provides intake and information
23 relating to the provisions of this Chapter 8.37.

1 1. The navigation program may provide a range of information, including but not
2 limited to:

- 3 a. Information on the provisions and procedures of this Chapter 8.37;
- 4 b. General court information, including but not limited to:
 - 5 i. Information on court procedures for filing civil actions in small
6 claims, district court, and superior court; and
 - 7 ii. Information on obtaining translation and interpretation services,
8 and other courtroom services;
 - 9 c. A list of organizations that can be used to identify attorneys;
 - 10 d. Organizations providing outreach and education, and/or legal assistance
11 to app-based workers;
 - 12 e. Information about classifying workers as employees or independent
13 contractors; and
 - 14 f. As determined by the Director, additional information related to the
15 provisions of this Chapter 8.37, other workplace protections for independent contractors, or other
16 resources for resolving workplace issues.

17 2. The navigation program may include outreach and education to the public on
18 the provisions and procedures of this Chapter 8.37.

19 3. The navigation program shall not include legal advice from the Agency.
20 However, if the Agency refers an app-based worker to a community organization through the
21 navigation program, the community organization is not precluded from providing legal advice.

22 **8.37.170 Remedies**

1 A. The payment of unpaid compensation, liquidated damages of up to twice the amount
2 of unpaid compensation, civil penalties, penalties payable to aggrieved parties, fines, and interest
3 provided under this Chapter 8.37 is cumulative and is not intended to be exclusive of any other
4 available remedies, penalties, fines, and procedures.

5 1. The amounts of all civil penalties, penalties payable to aggrieved parties, and
6 fines contained in this Section 8.37.170 shall be increased annually to reflect the rate of inflation
7 and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall
8 determine the amounts and file a schedule of such amounts with the City Clerk.

9 2. If a violation is ongoing when the Agency receives a complaint or opens an
10 investigation, the Director may order payment of unpaid compensation plus interest that accrues
11 after receipt of the complaint or after the investigation opens and before the date of the Director's
12 Order.

13 3. Interest shall accrue from the date the unpaid compensation was first due at 12
14 percent annum, or the maximum rate permitted under RCW 19.52.020.

15 4. If there is a remedy due to an aggrieved party, the Director may waive part or
16 all civil penalties and fines due to the Agency based on timely payment of the full remedy due to
17 the aggrieved party.

18 a. The Director may waive the total amount of civil penalties and fines due
19 to the Agency if the Director determines that the respondent paid the full remedy due to the
20 aggrieved party within ten days of service of the Director's Order.

21 b. The Director may waive half the amount of civil penalties and fines due
22 to the Agency if the Director determines that the respondent paid the full remedy due to the
23 aggrieved party within 15 days of service of the Director's Order.

1 c. The Director shall not waive any amount of civil penalties and fines due
2 to the Agency if the Director determines that the respondent has not paid the full remedy due to
3 the aggrieved party after 15 days of service of the Director's Order.

4 5. When determining the amount of liquidated damages, civil penalties, penalties
5 payable to aggrieved parties, and fines due under this Section 8.37.170 for a settlement
6 agreement or Director's Order, including but not limited to the mitigation of civil penalties and
7 fines due to the Agency for timely payment of remedy due to an aggrieved party under
8 subsection 8.37.170.A.4, the Director may consider:

9 a. The total amount of unpaid compensation, liquidated damages,
10 penalties, fines, and interest due;

11 b. The nature and persistence of the violations;

12 c. The extent of the respondent's culpability;

13 d. The substantive or technical nature of the violations;

14 e. The size, revenue, and human resources capacity of the respondent;

15 f. The circumstances of each situation;

16 g. The amount of penalties in similar situations; and

17 h. Pursuant to rules that the Director may issue, other factors that are
18 material and necessary to effectuate the terms of this Chapter 8.37.

19 B. A respondent found to be in violation of this Chapter 8.37 shall be liable for full
20 payment of unpaid compensation due plus interest in favor of the aggrieved party under the
21 terms of this Chapter 8.37, and other equitable relief. If the precise amount of unpaid
22 compensation cannot be determined due to a respondent's failure to produce records or if a
23 respondent produces records in a manner or form which makes timely determination of the

1 amount of unpaid compensation impracticable, the Director may designate a daily amount for
2 unpaid compensation due to aggrieved party. For any violation of this Chapter 8.37, the Director
3 may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

4 C. A respondent found to be in violation of this Chapter 8.37 for retaliation under Section
5 8.37.120 shall be subject to any appropriate relief at law or equity including, but not limited to
6 reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of
7 unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter
8 8.37, and liquidated damages in an additional amount of up to twice the unpaid compensation.
9 The Director also shall order the imposition of a penalty payable to the aggrieved party of up to
10 \$5,565.10.

11 D. The Director is authorized to assess civil penalties for a violation of this Chapter 8.37
12 and may specify that civil penalties are due to the aggrieved party rather than due to the Agency.

13 1. For a first violation of this Chapter 8.37, the Director may assess a civil penalty
14 of up to \$556.30 per aggrieved party.

15 2. For a second violation of this Chapter 8.37, the Director shall assess a civil
16 penalty of up to \$1,112.60 per aggrieved party, or an amount equal to ten percent of the total
17 amount of unpaid compensation, whichever is greater.

18 3. For a third or any subsequent violation of this 8.37, the Director shall assess a
19 civil penalty of up to \$5,565.10 per aggrieved party, or an amount equal to ten percent of the
20 total amount of unpaid compensation, whichever is greater.

21 4. For purposes of this subsection 8.37.170.D, a violation is a second, third, or
22 subsequent violation if the respondent has been a party to one, two, or more than two settlement
23 agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than

1 two Director's Orders, respectively, have issued against the respondent in the ten years preceding
2 the date of the violation; otherwise, it is a first violation.

3 E. The Director is authorized to assess fines for a violation of this Chapter 8.37 and may
4 specify that fines are due to the aggrieved party rather than due to the Agency. The Director is
5 authorized to assess fines as follows:

Violation	Fine
Failure to provide app-based worker with up-front information regarding offers under subsection 8.37.070.A	Up to \$556.30 per aggrieved party
Failure to provide app-based worker with electronic receipts within 24 hours of each offer completion or cancellation with cause under subsection 8.37.070.B	Up to \$556.30 per aggrieved party
Failure to provide app-based worker with weekly statements under subsection 8.37.070.C	Up to \$556.30 per aggrieved party
Failure to provide the Agency with records required under subsection 8.37.070.F	Up to \$556.30 per missing record
Failure to provide written notice of rights under Section 8.37.100	Up to \$556.30 per aggrieved party
Failure to retain network company records for three years under subsections 8.37.110.A and 8.37.110.B	Up to \$556.30 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 8.37.120	Up to \$1,112.60 per aggrieved party
Failure to provide notice of investigation to app-based workers under subsection 8.37.150.B.2	Up to \$556.30 per aggrieved party
Failure to post or distribute public notice of failure to comply with final order under subsection 8.37.210.A.1	Up to \$556.30

6
7 For each app-based worker hired by the network company and each missing record, the
8 maximum amount that may be imposed in fines in a one-year period for each type of violation
9 listed above is \$5,565.10. For each app-based worker hired by the network company, if a fine for
10 retaliation is issued, the maximum amount that may be imposed in a one-year period is
11 \$22,259.36.

1 F. A respondent that willfully hinders, prevents, impedes, or interferes with the Director
2 or Hearing Examiner in the performance of their duties under this Chapter 8.37 shall be subject
3 to a civil penalty of not less than \$1,112.60 and not more than \$5,565.10.

4 G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and
5 interest, the Agency may assess against the respondent in favor of the City the reasonable costs
6 incurred in enforcing this Chapter 8.37, including but not limited to reasonable attorneys' fees.

7 H. A respondent that is the subject of a settlement agreement stipulating that a violation
8 has occurred shall count for debarment, or a final order for which all appeal rights have been
9 exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such
10 amounts due under the final order have been paid in full to the Director. If the respondent is the
11 subject of a final order two times or more within a five-year period, the network company shall
12 not be allowed to bid on any City contract for two years. This subsection 8.37.170.H shall be
13 construed to provide grounds for debarment separate from, and in addition to, those contained in
14 Chapter 20.70 and shall not be governed by that chapter provided that nothing in this subsection
15 8.37.170.H shall be construed to limit the application of Chapter 20.70. The Director shall notify
16 the Director of Finance and Administrative Services of all respondents subject to debarment
17 under this subsection 8.37.170.H.

18 **8.37.180 Appeal period and failure to respond**

19 A. An app-based worker or other person who claims an injury as a result of an alleged
20 violation of this Chapter 8.37 may appeal the Determination of No Violation, pursuant to
21 Director rules.

22 B. A respondent may appeal the Director's Order, including all remedies issued pursuant
23 to Section 8.37.170, by requesting a contested hearing before the Hearing Examiner in writing

1 within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's
2 Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal
3 period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run
4 until 5 p.m. on the next business day.

5 **8.37.190 Appeal procedure and failure to appear**

6 A. Contested hearings shall be conducted pursuant to the procedures for hearing
7 contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for
8 hearing contested cases. The hearing shall be conducted de novo and the Director shall have the
9 burden of proving by a preponderance of the evidence that the violation or violations occurred.
10 Upon establishing such proof, the remedies and penalties imposed by the Director shall be
11 upheld unless it is shown that the Director abused discretion. Failure to appear for a contested
12 hearing shall result in an order being entered finding that the respondent committed the violation
13 stated in the Director's Order. For good cause shown and upon terms the Hearing Examiner
14 deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

15 B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying,
16 or reversing the Director's Order, consistent with Ordinance 126068.

17 **8.37.200 Appeal from Hearing Examiner order**

18 A. The respondent may obtain judicial review of the decision of the Hearing Examiner by
19 applying for a Writ of Review in the King County Superior Court within 30 days from the date
20 of the decision in accordance with the procedure set forth in chapter 7.16 RCW, other applicable
21 law, and court rules.

22 B. The decision of the Hearing Examiner shall be final and conclusive unless review is
23 sought in compliance with this Section 8.37.200.

1 **8.37.210 Failure to comply with final order**

2 A. If a respondent fails to comply within 30 days of service of any settlement agreement
3 with the Agency, or with any final order issued by the Director or the Hearing Examiner for which
4 all appeal rights have been exhausted, the Agency may pursue, but is not limited to, the following
5 measures to secure compliance:

6 1. The Director may require the respondent to post or distribute public notice of
7 the respondent's failure to comply in a form and manner determined by the Agency.

8 2. The Director may refer the matter to a collection agency. The cost to the City
9 for the collection services will be assessed as costs, at the rate agreed to between the City and the
10 collection agency, and added to the amounts due.

11 3. The Director may refer the matter to the City Attorney for the filing of a civil
12 action in King County Superior Court, the Seattle Municipal Court, or any other court of
13 competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the
14 Director may seek to enforce a Director's Order or a final order of the Hearing Examiner under
15 Section 8.37.190.

16 4. The Director may request that the City's Department of Finance and
17 Administrative Services deny, suspend, refuse to renew, or revoke any business license held or
18 requested by the network company or person until such time as the network company complies
19 with the remedy as defined in the settlement agreement or final order. The City's Department of
20 Finance and Administrative Services shall have the authority to deny, refuse to renew, or revoke
21 any business license in accordance with this subsection 8.37.210.A.4.

22 B. No respondent that is the subject of a final order issued under this Chapter 8.37 shall
23 quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or

1 stock of goods without first notifying the Agency and without first notifying the respondent's
2 successor of the amounts owed under the final order at least three business days before such
3 transaction. At the time the respondent quits business, or sells out, exchanges, or otherwise
4 disposes of the respondent's business or stock of goods, the full amount of the remedy, as defined
5 in a final order issued by the Director or the Hearing Examiner, shall become immediately due
6 and payable. If the amount due under the final order is not paid by respondent within ten days
7 from the date of such sale, exchange, conveyance, or disposal, the successor shall become liable
8 for the payment of the amount due, provided that the successor has actual knowledge of the order
9 and the amounts due or has prompt, reasonable, and effective means of accessing and verifying
10 the fact and amount of the order and the amounts due. The successor shall withhold from the
11 purchase price a sum sufficient to pay the amount of the full remedy. When the successor makes
12 such payment, that payment shall be deemed a payment upon the purchase price in the amount
13 paid, and if such payment is greater in amount than the purchase price the amount of the
14 difference shall become a debt due such successor from the network company.

15 **8.37.220 Debt owed The City of Seattle**

16 A. All monetary amounts due under the Director's Order shall be a debt owed to the City
17 and may be collected in the same manner as any other debt in like amount, which remedy shall
18 be in addition to all other existing remedies, provided that amounts collected by the City for
19 unpaid compensation, liquidated damages, penalties payable to aggrieved parties, or front pay
20 shall be held in trust by the City for the aggrieved party and, once collected by the City, shall be
21 paid by the City to the aggrieved party.

22 B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the
23 time period set forth in subsection 8.37.180.B, the Director's Order shall be final, and the

1 Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, to
2 enforce the Director's Order by entering judgment in favor of the City finding that the respondent
3 has failed to exhaust its administrative remedies and that all amounts and relief contained in the
4 order are due. The Director's Order shall constitute prima facie evidence that a violation occurred
5 and shall be admissible without further evidentiary foundation. Any certifications or declarations
6 authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply
7 with the order or any parts thereof, and is therefore in default, or that the respondent has failed to
8 appeal the Director's Order to the Hearing Examiner within the time period set forth in
9 subsection 8.37.180.B, and therefore has failed to exhaust the respondent's administrative
10 remedies, shall also be admissible without further evidentiary foundation.

11 C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner
12 within the time period set forth in subsection 8.37.200.A, the order of the Hearing Examiner
13 shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's
14 Order by entering judgment in favor of the City for all amounts and relief due under the order of
15 the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence
16 that the violations contained therein occurred and shall be admissible without further evidentiary
17 foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing
18 evidence that the respondent has failed to comply with the order or any parts thereof, and is
19 therefore in default, or that the respondent has failed to avail itself of judicial review in
20 accordance with subsection 8.37.200.A, shall also be admissible without further evidentiary
21 foundation.

22 D. In considering matters brought under subsections 8.37.220.B and 8.37.220.C, the
23 Seattle Municipal Court may include within its judgment all terms, conditions, and remedies

1 contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable,
2 that are consistent with the provisions of this Chapter 8.37.

3 **8.37.230 Private right of action**

4 A. Any person or class of persons that suffers an injury as a result of a violation of this
5 Chapter 8.37, or is the subject of prohibited retaliation under Section 8.37.120, may bring a civil
6 action in a court of competent jurisdiction against the network company or other person violating
7 this Chapter 8.37 and, upon prevailing, may be awarded reasonable attorney fees and costs and
8 such legal or equitable relief as may be appropriate to remedy the violation including, without
9 limitation: the payment of any unpaid compensation plus interest due to the person and
10 liquidated damages in an additional amount of up to twice the unpaid compensation; and a
11 penalty payable to any aggrieved party of up to \$5,565.10 if the aggrieved party was subject to
12 prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due
13 at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

14 B. For purposes of this Section 8.37.230, "person" includes any entity a member of which
15 has suffered an injury or retaliation, or any other individual or entity acting on behalf of an
16 aggrieved party that has suffered an injury or retaliation.

17 C. For purposes of determining membership within a class of persons entitled to bring an
18 action under this Section 8.37.230, two or more app-based workers are similarly situated if they:

19 1. Are or were hired for the same network company or network companies,
20 whether concurrently or otherwise, at some point during the applicable statute of limitations
21 period,

22 2. Allege one or more violations that raise similar questions as to liability, and

23 3. Seek similar forms of relief.

1 D. For purposes of subsection 8.37.230.C, app-based workers shall not be considered
2 dissimilar solely because the app-based workers’:

3 1. Claims seek damages that differ in amount, or

4 2. Job titles or other means of classifying app-based workers differ in ways that
5 are unrelated to their claims.

6 E. An order issued by the court may include a requirement for a network company to
7 submit a compliance report to the court and to the Agency.

8 **8.37.233 Waiver**

9 Any waiver by an individual of any provisions of this Chapter 8.37 shall be deemed contrary to
10 public policy and shall be void and unenforceable.

11 **8.37.235 Encouragement of more generous policies**

12 A. Nothing in this Chapter 8.37 shall be construed to discourage or prohibit a network
13 company from the adoption or retention of minimum labor and compensation standards more
14 generous than the one required by this Chapter 8.37.

15 B. Nothing in this Chapter 8.37 shall be construed as diminishing the obligation of the
16 network company to comply with any contract, or other agreement providing more generous
17 minimum labor and compensation standards to an app-based worker than required by this
18 Chapter 8.37.

19 **8.37.240 Other legal requirements; effect on other laws**

20 A. The provisions of this Chapter 8.37:

21 1. Supplement and do not diminish or replace any other basis of liability or
22 requirement established by statute or common law;

1 2. Shall not be construed to preempt, limit, or otherwise affect the applicability of
2 any other law, regulation, requirement, policy, or standard for minimum labor and compensation
3 requirements, or that extends other protections to app-based workers; and

4 3. Shall not be interpreted or applied so as to create any power or duty in conflict
5 with federal or state law.

6 B. Nor shall this Chapter 8.37 be construed to preclude any person aggrieved from
7 seeking judicial review of any final administrative decision or order made under this Chapter
8 8.37 affecting such person. Nothing in this Section 8.37.240 shall be construed as restricting an
9 app-based worker’s right to pursue any other remedies at law or equity for violation of the
10 contractor’s rights.

11 C. A network company’s failure to comply with the provisions of this Chapter 8.37 shall
12 not render any contract between the network company and an app-based worker void or
13 voidable.

14 D. No provision of this Chapter 8.37 shall be construed as providing a determination
15 about the legal classification of any individual as an employee or independent contractor.

16 **8.37.250 Severability**

17 The provisions of this Chapter 8.37 are declared to be separate and severable. If any clause,
18 sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 8.37, or the
19 application thereof to any network company, app-based worker, person, or circumstance, is held
20 to be invalid, it shall not affect the validity of the remainder of this Chapter 8.37, or the validity
21 of its application to other persons or circumstances.

22 Section 4. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance
23 126283, is amended as follows:

1 **3.02.125 Hearing Examiner filing fees**

2 A. The filing fee for a case before the City Hearing Examiner is \$85, with the following
3 exceptions:

Basis for Case	Fee in dollars
* * *	
All Gender Restroom Notice of Violation (Section 14.07.040)	No fee
<u>App-based Worker Minimum Compensation Ordinance (Chapter 8.37)</u>	<u>No fee</u>
Cable Communications (Chapter 21.60)	No fee
* * *	

4 * * *

5 Section 5. Section 3.15.000 of the Seattle Municipal Code, last amended by Ordinance
6 126189, is amended as follows:

7 **3.15.000 Office of Labor Standards created – Functions**

8 There is created within the Executive Department an Office of Labor Standards, under the
9 direction of the Mayor. The mission of the Office of Labor Standards is to advance labor
10 standards through thoughtful community and business engagement, strategic enforcement and
11 innovative policy development, with a commitment to race and social justice. The Office of
12 Labor Standards seeks to promote greater economic opportunity and further the health, safety,
13 and welfare of workers; support employers and other hiring entities in their implementation of
14 labor standards requirements; and end barriers to workplace equity for women, communities of
15 color, immigrants and refugees, and other vulnerable workers.

16 The functions of the Office of Labor Standards are as follows:

17 A. Promoting labor standards through outreach, education, technical assistance, and
18 training;

19 B. Collecting and analyzing data on labor standards enforcement;

1 C. Partnering with community, businesses, and workers for stakeholder input and
2 collaboration;

3 D. Developing innovative labor standards policy;

4 E. Administering and enforcing Title 8, City of Seattle ordinances relating to paid sick
5 and safe time (Chapter 14.16), use of criminal history in employment decisions (Chapter 14.17),
6 minimum wage and minimum compensation (Chapter 14.19), wage and tip compensation
7 requirements (Chapter 14.20), secure scheduling (Chapter 14.22), domestic workers (Chapter
8 14.23), hotel employees safety protections (Chapter 14.26), protecting hotel employees from
9 injury (Chapter 14.27), improving access to medical care for hotel employees (Chapter 14.28),
10 hotel employees job retention (Chapter 14.29), commuter benefits (Chapter 14.30),
11 transportation network company driver deactivation protections (Chapter 14.32), transportation
12 network company driver minimum compensation (Chapter 14.33), independent contractor
13 protections (Chapter 14.34), and other labor standards ordinances that may be enacted in the
14 future.

15 Section 6. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last
16 amended by Ordinance 126274, is amended as follows:

17 **6.208.020 Denial, revocation of, or refusal to renew business license**

18 A. In addition to any other powers and authority provided under this Title 6, the Director,
19 or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any
20 business license issued under the provisions of this Chapter 6.208. The Director, or the Director's
21 designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or
22 refusal to renew the license and on what grounds such a decision was based. The Director may

1 deny, revoke, or refuse to renew any license issued under this Chapter 6.208 on one or more of
2 the following grounds:

- 3 1. The license was procured by fraud or false representation of fact.
- 4 2. The licensee has failed to comply with any provisions of this Chapter 6.208.
- 5 3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35,
6 5.38, 5.39, 5.40, 5.45, 5.46, 5.48, 5.50, or 5.52.
- 7 4. The licensee is in default in any payment of any license fee or tax under Title 5
8 or Title 6.
- 9 5. The property at which the business is located has been determined by a court to
10 be a chronic nuisance property as provided in Chapter 10.09.
- 11 6. The applicant or licensee has been convicted of theft under subsection
12 12A.08.060.A.4 within the last ten years.
- 13 7. The applicant or licensee is a person subject within the last ten years to a court
14 order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29
15 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of
16 either:
 - 17 a. The expiration of the time for filing an appeal from the final judgment
18 order under the court rules in effect at the time of the final judgment order; or
 - 19 b. If a timely appeal is made, the date of the final resolution of that appeal
20 and any subsequent appeals resulting in final judicial affirmation of the findings of violations of
21 chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.
- 22 8. The applicant or licensee is a person subject within the last ten years to a final
23 and binding citation and notice of assessment from the Washington Department of Labor and

1 Industries for violations of chapters 49.46, 49.48, or 49.52 RCW, and the citation amount and
2 penalties assessed therewith were not satisfied within 30 days of the date the citation became
3 final and binding.

4 9. Pursuant to relevant provisions in Title 8, subsections 14.16.100.A.4,
5 14.17.075.A, 14.19.100.A.4, 14.20.080.A.4, 14.22.115.A.4, 14.23.115.A.4, 14.26.210.A.4,
6 14.27.210.A.4, 14.28.210.A.4, 14.30.180.A.4, 14.33.210.A.4, and 14.34.210.A.4, subsection
7 100.240.A.4 of Ordinance 126091, subsection 100.240.A.4 of Ordinance 126094, and subsection
8 100.240.A.4 of Ordinance 126274, the applicant or licensee has failed to comply, within 30 days
9 of service of any settlement agreement, with any final order issued by the Director of the Office
10 of Labor Standards, or any final order issued by the Hearing Examiner under Title 8, Chapters
11 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, 14.30, 14.33, and 14.34,
12 Ordinance 126091, Ordinance 126094, and Ordinance 126274 for which all appeal rights have
13 been exhausted, and the Director of the Office of Labor Standards has requested that the Director
14 deny, refuse to renew, or revoke any business license held or requested by the applicant or
15 licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as the
16 violation(s) under Title 8, Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28,
17 14.29, 14.30, 14.33, and 14.34, Ordinance 126091, Ordinance 126094, and Ordinance 126274
18 are remedied.

19 10. The business is one that requires an additional license under this Title 6 and
20 the business does not hold that license.

21 11. The business has been determined under a separate enforcement process to be
22 operating in violation of law.

23 * * *

1 Section 7. Section 3 of this ordinance shall take effect on XX, 1, 2023.

2 Section 8. This ordinance shall take effect and be in force 30 days after its approval by
3 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
4 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

5 Passed by the City Council the _____ day of _____, 2021,
6 and signed by me in open session in authentication of its passage this ____ day of
7 _____, 2021.

8 _____
9 President _____ of the City Council

10 Approved / returned unsigned / vetoed this _____ day of _____, 2021.

11 _____
12 Jenny A. Durkan, Mayor

13 Filed by me this _____ day of _____, 2021.

14 _____
15 Monica Martinez Simmons, City Clerk

16 (Seal)



Pay-up Proposal ♦ DRAFT LEGISLATION

App-based Worker Minimum Compensation Ordinance

KARINA BULL, ANALYST
PUBLIC SAFETY AND HUMAN SERVICES COMMITTEE
SEPTEMBER 14, 2021

Pay-up Proposal

Suite of labor standards protections for app-based workers*

- 1. Minimum compensation (pay structure)**
- 2. Transparency**
- 3. Flexibility**
4. Deactivation
5. Background checks
6. Access to restrooms
7. Protections against discrimination and right to reasonable accommodations
8. App-based Workers Advisory Board

** Proposal would also include amendments to the Independent Contractor Protections Ordinance*

App-based Worker Minimum Compensation

Creation of Title 8 Labor Standards ♦ Chapter 8.37

1. **Minimum compensation (pay structure)**
2. **Transparency**
3. **Flexibility**
4. Notice of rights
5. Recordkeeping
6. Prohibited retaliation
7. Enforcement by Office of Labor Standards (OLS)

Minimum Compensation



Policy Goals

- *Set single pay standard for all business models.*
- *Ensure payment of minimum wage plus expenses with a per-minute and per-mile floor for engaged time and engaged miles to complete each offer.*

App-based Workers

1. Covered

- Workers providing on-demand or pre-scheduled, physical services through a network company's worker platform

2. Not covered

- Workers with significant bargaining power and influence over their pay and conditions of work
- Licensed professional services (by rule), creative work, wholly digital services, sales or rental of goods or real estate, and TNC services

Network Companies

1. Covered

- Online-enabled applications or platforms that facilitate the provision of services by app-based workers
- 250 or more app-based workers worldwide, regardless of where those workers perform work

2. Not covered

- Platforms offering scheduling software, transmitting payment, or operating as digital advertising/messaging boards *that do not facilitate services, intermediate relationships, or govern the terms or oversight of work performance*

Policy Decisions

1. Removal of exemption for online orders resulting in payment of \$1,000+
2. New requirement for discretionary rulemaking on “engaged time” for offers with non-compensable time (e.g., sleep-time and other periods of off-duty time when worker can pursue personal activities without interruption)
 - Overnight home care
 - Overnight pet sitting

Minimum Compensation – Pay standard

1. Minimum compensation per engaged minute

- Minimum wage equivalent x assoc. cost factor x assoc. time factor = “per minute amount” for engaged time to ensure minimum wage for all work time

plus

2. Minimum compensation per engaged mile

- Standard mileage rate x assoc. mileage factor = “per mile amount” per engaged mile to account for all work miles including associated miles

Minimum Compensation – 2021 example

1. Minimum compensation per engaged minute

- $\$0.28 \times 1.25 \times 1.13 = \0.40 per minute of engaged time
plus

2. Minimum compensation per engaged mile

- $\$0.56$ per mile IRS rate $\times 1.25 = \$0.70$ per engaged mile

Associated Cost Factor

- **Associated Cost Factor** for baseline expenses paid by app-based workers treated as independent contractors (vs. baseline expenses paid by companies). Adjustable by OLS Director after the ordinance is in effect for three years.

Item	Amount	Notes
Pay roll tax	7.65%	Additional “employer share” of payroll taxes
State Paid Family Medical Leave	0.25%	Expense of contractor opt-in to PFML
Unemployment compensation	1.06%	Average cost to cover an employee in state unemployment insurance
Workers Compensation	2.84%	Average cost of state workers comp coverage
Miscellaneous expenses	1.2%	Equipment, business taxes & license fees
Total associated cost factor	113%	1.13

Associated Time Factor

- **Associated Time Factor** for additional working time to successfully perform work. Adjustable by OLS Director after the ordinance is in effect for three years.

Item	Amount per engaged hour	Notes
Rest breaks	2.5 minutes	10 minutes of rest time per 4 hours of work
Time to review offers	2.5 minutes	Minimal estimate of time to review offers
Time to availability	5 minutes	Minimal estimate of time from completion of offer to availability for next offer
Time for administrative tasks	1.5 minutes	Minimal estimate of time managing account, recordkeeping, engaging customer support
Total associated time factor	121%	1.21

Associated Mileage Factor

- **Associated Mileage Factor** for miles driven while a worker is not engaged on a specific offer, but when those miles are required to successfully perform work.

Amount	Notes
For every 10 engaged miles:	Non-exclusive examples
• 1.25 miles	Miles to travel to locations where offers are available or return to starting location when dispatched from hub
• 1.25 miles	Miles to travel to locations for rest breaks, meal breaks, restroom access, and administrative needs.
Total associated mileage factor 125%	1.25

Minimum Compensation – Per offer

3. Minimum compensation per offer

- For each offer, company would provide a minimum per offer amount of at least \$5
- OLS Director would annually adjust the minimum per offer amount to reflect the rate of inflation

Policy Decisions

1. Change of associated time factor from 1.25 (15 minutes) to 1.21 (11 minutes)
2. New requirement for discretionary rulemaking on adjusting the associated time factor
 - Authority limited to increasing the amount; no reductions
 - Requirement to consider relevant sources of data and consult the App-based Workers Advisory Board
3. New requirement for three-year waiting period before Director could adjust the associated cost factor or associated time factor

Transparency



Policy Goals

- *Ensure workers have information to make informed choices about which offers to accept, and to verify compliance with pay standard and other rights.*
- *Provide clarity to end customers and third-party businesses on the nature of charges, including which amounts are paid to workers and which are retained by the company.*

Transparency (1/2)

1. Offer information
 - a. Information available for at least three minutes
 - b. Best estimate of engaged time and mileage to complete online order
 - c. Guaranteed minimum amount of payment
 - d. Locations of work (e.g., geographic and business locations)
 - e. Physical requirements of work (e.g., flights of stairs, weight of materials)
 - f. Contents of unsealed products, when exposure or handling of such products may pose health risks or violate personal beliefs

Transparency (2/2)

2. Electronic receipts within 24 hours for each completed and/or cancelled offer
 - a. Worker receipt
 - b. Customer receipt
3. Weekly information on completed and/or cancelled offers
4. 14-day notice before significant change(s) to payment calculation
5. Disclosure to OLS of aggregate and disaggregated records on offers facilitated by its worker platform

Policy Decisions

1. Removal of requirement to provide electronic receipts to third-party businesses
2. Removal of requirement to provide workers with annual and quarterly tax information
4. Removal of requirement to provide public disclosure of aggregated records
5. New requirement to provide OLS with aggregated and disaggregated records
6. New requirement for mandatory rulemaking on providing OLS with aggregated and disaggregated records

Flexibility



Policy Goals

Protect workers' flexibility, including the right to freely choose jobs and hours, while maintaining companies' ability to provide services to end customers and third-party businesses.

Flexibility

1. No requirements to be logged into platform on specific dates and times
2. No limitations on amount of time to be logged onto platform except for health and safety restrictions
3. No adverse action based on work availability
4. Right to accept or reject any individual offer, any types of offers, and any number or proportion of offers
5. Right to cancel offer with cause
6. No restriction on working for other companies, including self-employment
7. Limits on monitoring in the interest of the company

Next steps

Issues for Further Consideration (1/2)

1. **Effective date**
2. **Joint liability for end consumer**
3. **Definitions/categories of types of offers**
 - On-demand vs pre-scheduled
4. **Notice of contents of unsealed products**
 - Requirement for notice of contents that may violate *religious* beliefs (instead of *personal* beliefs)

Issues for Further Consideration (2/2)

4. Enforcement

- Minimum daily amount for unpaid compensation due to worker
- Complaint procedure – specific protocols
- Navigation program – information on private arbitration

5. Amendments to Independent Contractor Protections Ordinance

Future Stakeholder Meetings

Discussion of unIntroduced draft bills

1. Minimum compensation: Pay structure, transparency, and flexibility
2. Right to access work: Deactivation and background checks
3. Access to restrooms
4. App-based Worker Advisory Board
5. Protections against discrimination and right to reasonable accommodations
6. Amendments to Independent Contractor Protections Ordinance

Questions?



Legislation Text

File #: Inf 1869, **Version:** 1

Pre-Filing Diversion Racial Equity Toolkit Report for Adults 25 years Old and Older

SEPT. 2021

Pre-Filing Diversion
Racial Equity Toolkit
Report for Adults 25 years
Old and Older



Seattle City Attorney's Office in
Partnership
with Baker Consulting

Acknowledgments

We would like to thank all those who participated for their time, knowledge, and wisdom. We would like to especially thank our community members who took time out of their day to share their expertise in an effort to shift a harmful system that is rooted in systemic racism and perpetuates harm disproportionately onto Black, Indigenous, People of Color Communities. We deeply thank them for their contributions.

We have not named anyone who participated in this project for many people from community had expressed that they did not want to be seen as endorsing government projects without knowing the results. Due to a history of government systemically harming, traumatizing, and using BIPOC communities we understand their discomfort and have chosen to not include anyone's name so as to not give a false perception that this work came out of just those who work directly in government systems.

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I. EXECUTIVE SUMMARY

In the Winter of 2021, the City Attorney's Office (CAO) hired Baker Consulting to facilitate conversations with community members concerning developing a new diversion program for adults 25 years old and older. The purpose was to run the potential new diversion program through the Racial Equity Toolkit (RET). The RET is the first step in determining the benefits and/or harms of new programming from an embodied equity perspective. The RET is used to develop and assess new and current programs and projects within the City of Seattle.

The CAO acknowledges that our current criminal legal system is unjust and is rooted in institutional racism that disproportionately incarcerates and penalizes Black, Indigenous, People of Color (BIPOC) communities. The harm inherent in the criminal legal system needs to be undone. The CAO wants to transform this system so that it is less harmful to BIPOC communities and is mindful of how social poverty impacts people's behaviors. Understanding the historical impacts because of institutional and systemic racism, BIPOC communities are more likely to experience poverty.

Building upon the support the CAO gives to other Pre-Filing Diversion Programs, Alternative programs, the Prisoner and Community Corrections Re-entry Workgroup, the Law Enforcement Assisted Diversion/Let Everyone Advance with Dignity (LEAD) Program, the CAO is proposing a new diversion program for Adult's 25 years old and older. The new program intends to be informed with community input to better support BIPOC community members, reduce disproportionality and have a higher positive impact in decreasing incarceration rates.

Baker Consulting hosted a total of seven focus group sessions with two different groups of community members. The focus groups were made up of community members that are well known and trusted in BIPOC communities. Various experiences were represented, including: Lived experience going through the criminal legal system, program design & management experience, youth advocates & those who work with formerly incarcerated youth, and those who currently and formerly worked in the criminal legal system (probation, court operations, legal defense, and prosecution fields). Focus group participants met virtually to discuss questions related to the role of the criminal legal system, CAO's role, program development, funding, and to inform the RET process. As a practice of honoring community members when asking them to share their experience, knowledge, and wisdom, the participants were offered a stipend and one meal voucher.

It should be noted that many focus group participants raised awareness of the tension of community members being asked for their input. Due to historical traumas caused by institutional systems, many community members do not inherently trust institutions to follow through on community feedback. Participants discussed the concerns of being used to “rubber stamp,” a process built in a racist system. Because of this concern, we want to recognize the labor that every community member provided by being a part of this process and look towards the CAO to use this information to reduce the harm caused to BIPOC communities by the criminal legal system.

The CAO has followed through on one commitment to include community voice in the process by engaging in the RET process. Moving forward, there is an expectation from community members that the CAO will incorporate the experience, knowledge, and wisdom shared to inform the next steps in the development process, such as funding, environmental scan, RFP/Q development, procurement, and implementation.

A. Purpose and Goals of the Project

In 2017, the Seattle City Council funded the Seattle City Attorney's Office (CAO) to begin a Pre-Filing Diversion program. The Pre-Filing Diversion program is a pre-charge diversion opportunity. Individuals participate in the program before charges are filed rather than having the consequences of the City filing a criminal charge. These participants do not have to attend numerous court hearings, and there is no fear of jail or probation. Rather than informing the court, the prosecutor's office is told whether a person completes the diversion program by the community partner. If there is completion, the prosecutor will decline potential criminal charge.

In September 2017, the CAO piloted the Mainstream Young Adult Pre-filing Diversion program in partnership with the community organization CHOOSE 180. This program offers pre-filing diversion to 18-24-year-olds. Likewise, in 2018, in collaboration with the community organization Legacy of Equality, Leadership, and Organizing (LELO), the CAO began pre-filing diversion and re-licensing support for individuals of all ages accused of Driving While License Suspended 3rd degree. This year, in partnership with the community organization Gay City, the CAO began offering pre-filing diversion to 18-24-year old's accused of family-based domestic violence crimes.

Diversion and Alternative Programs within the City Attorney's Office

The Seattle City Council established a Prisoner and Community Corrections Re-entry Workgroup (also referred to as Seattle Reentry Group) in December 2015. Its mandate included developing policies, ordinances, strategies, and/or programs to facilitate reentry and remove barriers to employment, housing, and other benefits. One of the seven strategies the Reentry Workgroup put forth in its final report in 2018 was to "Expand anti-poverty, diversion, and public health responses and intervention." By 2018, the CAO-CHOOSE 180 partnership had already earned substantial support; it was seen by many, most importantly people from historically marginalized communities, as a much better alternative to the traditional criminal legal system. The Seattle Reentry Workgroup recommended expanding pre-filing diversion for 25 years and older, particularly focused on BIPOC (Black, Indigenous, People of Color) communities.

A court-based alternative program that involves a partnership between CAO, the Department of Public Defense, and the Court is Community Court. Community Court takes a different approach to adjudicate pending criminal cases and is a collaborative effort between Defense, Prosecution, Pre-Trial Services, and the Court. Its goal is to address



unmet needs through connection to community services and support. Community Court provides up to four opportunities for individuals with lower-level crimes like Theft and Criminal Trespass to have their cases diverted. Participants engage in a social service screening in partnership with the Court's Community Resource Center and must complete community service hours. Some participants will also have treatment obligations. If participants successfully meet their obligations, their case is dismissed. Some PFD-eligible individuals would also be eligible for Community Court had their case been filed. Community Court, though, is a post-file, court-based program that is offered (up to four times) to an individual. It is a goal of CAO to find a way for the programs to primarily seek to complement each other rather than compete.

The LEAD (Law Enforcement Assisted Diversion/Let Everyone Advance with Dignity) program also provides diversion opportunities. The LEAD program began as post-arrest and pre-booking program designed to meet participants' immediate needs (like food or housing), and over time, with support from case managers, address any underlying issues, including addictions. Officers exercise discretionary authority to divert individuals to community-based intervention programming rather than booking them into custody. The program focuses on finding ways to solve problems for a specific population of individuals who are consistently in the criminal legal system and not responding well to that approach. CAO has partnered with the police and REACH to assist this group of people with wrap-around services to meet their needs, while understanding that systems have historically oppressed and failed to meet their needs. Many LEAD clients are out of the age range to qualify for the current PFD program; however, some crossover of young people engaged in LEAD have also participated in the CHOOSE 180 Workshop. Because CAO has two prosecutorial liaisons coordinating the cases of LEAD clients, the Pre-Filing Diversion teams work in close collaboration on how to best serve the young people the programs seek to engage. In those situations, CAO has found that the programs complimented each other, rather than duplicated efforts, because of the unique benefits of each program and the ability to collaborate. With any expansion of PFD, CAO plans on continuing to partner with LEAD. Additionally, we believe it is worth noting that LEAD now receives vast majority of its referrals from community sources.

The CAO acknowledges the harm inherent in the criminal legal system and values its community partnerships. CAO has seen significant public safety outcomes from its diversion partnerships and desires to grow the opportunities for individuals over age 25. They see opportunities for transformation within the department with closer relationships with BIPOC communities and collaborations with expanded diversion programs.

As a next step toward expanding opportunities, the CAO engaged with community members in conversation using the Racial Equity Toolkit (RET) to assess community support and the feasibility of growing diversion. This report is a summary of the RET engagement process and the recommendations that emerged.

B. Racial Equity Toolkit Methodology

CAO engaged Baker Consulting to facilitate community input for a new diversion program for Adults 25 Years old and older, using the City of Seattle Racial Equity Tool Kit (RET). In addition to the basic questions of the RET, the CAO proposed programmatic questions to obtain a deeper understanding, specifically aimed to undo the bias that shows up based on systemic impacts. What are the interdisciplinary issues necessary to solve systemic issues? What is the role of community in a diversion program? Who should be eligible for the diversion program: how to contextualize people's criminal history? These questions influenced other questions answered during the focus groups.

Based on experience and feedback using the City's RET with other departments and community groups, Baker Consulting was aware that many are not satisfied with the RET content. It was noted that procedures are not in place to reengage the community for further guidance. Nevertheless, there was a consensus that the RET is a positive step, but emphasis was placed on requirements for the community to stay involved beyond the submittal of recommendations; community members want to give guidance in all of the stages of development and implementation; these two areas are noted as essential strategies for obtaining authentic trust too.

Thus, Baker Consulting added additional questions to provide helpful and specific input to the effective design and implementation of the program. The RET consists of six steps with twelve questions. Using a focus group format, Baker Consulting expanded the RET question and asked twenty-eight questions, with some additional follow-up questions, covering the following topic areas: System's Roles, City Attorney Office Role, and Program Design questions. All total, this resulted in robust community and CAO staff input, which is summarized in this report. All questions and responses provided are included in Attachment B.

Using principles of Authentic Community Engagement¹ and building on community organizing principles, a wide range of focus group participants were engaged. Based on established relationships, Baker Consulting recruited community members that are well known and trusted in the Black, Indigenous, People of Color (BIPOC) communities. We included people with various experiences: some with lived experiences from their previous involvement in the criminal legal system, some with program design & management experiences, some from their knowledge about probation and court operations, some who worked in the legal defense and prosecution fields. With this deep level of experiences, we were able to get a full spectrum of perspectives and wisdom to inform a RET audience and provide valuable input to inform program design and development. Community members and CAO staff participated in the core RET focus group, which was convened in five two-hour sessions via zoom.

[1] https://www.strivetgether.org/wp-content/uploads/2017/03/10_principles_community_engagement_2.pdf

Representation of community advocates working in the field was crucial to engagement, and their voice is central in providing community feedback. This group includes those working to improve racial equity in criminal legal systems, working on the ground level with individuals with criminal legal system involvement, and those with lived experience. Because of the robust conversation in breakout groups, a number of questions were not answered in the first 4 sessions. Therefore, an additional session was added, bringing the total number of sessions to 5, not the original 4 planned.

Additionally, to ensure we left no stone unturned, we asked the second focus group to review the RET's initial summary developed from the first focus group; we wanted to know the gaps and obtain additional experiential feedback from their perspectives. Based on their ground-level experiences—their input in helping BIPOC members reengage in community—was passionate and articulated innovative ideas highlighted in parts of this report.

All community participants received a stipend and one meal voucher. We believe it is essential to honor and respect the time of community members. Not all of the community members accepted the stipends. A list of RET focus group participants is included in Attachment A, along with definitions they offered of racial equity.

C. Major Highlights

The robust community input, including people with lived experience in the criminal legal system and those working to address harms in BIPOC communities from this system, brought forth innovative approaches which deserve thoughtful consideration.

- Acknowledgement that the system is broken (as affirmed in CAO data) requires diversion for BIPOC individuals. The Criminal Legal System is rooted in racism and disproportionately impacts Black people and communities of color (BIPOC – Black, Indigenous, People of color). It is dehumanizing, harmful, and targets low-income BIPOC communities, including those experiencing homelessness and those with mental health concerns.
- Recommendations for diversion to be as broad as possible regarding which charges are eligible—many call to divert all but the most serious crimes. Domestic violence is called out as an exception, but also with more appropriate supports.
- Eliminate barriers to diversion that maintain disproportionality: criminal history exclusion, arbitrary referrals to diversion, financial barriers – fines, fees, restitution
- A major theme was for the City to divest from institutional systems that destroy or undermine the community and invest in healthy community-based responses. There is a wide range of perceptions and expectations of what this means, which are described in the section on System and Program Strategies, page 20.
- Community dialogue provided a vision of community investment that is broad and flexible, anchored in supporting and restoring community resilience and individual and family positive outcomes. Just as the previous RET process to establish the Young Adult Diversion Program resulted in design with more autonomy and

ownership at the community level through a contracted community-based provider(s), this feedback calls for taking this principle further.

- Principles and elements of a diversion program for effective results:
 - Diversion program designed and delivered by community members, including those with lived experience.
 - Services focused on healing-centered engagement and restorative practices provided by trusted community members and natural networks.
 - Infrastructure: Establish a central center through which recommendations can be made.
 - Community acting together: Engagement by many interdisciplinary relationships, churches, community organizations that naturally take responsibility to support specific groups.
 - Services are prescriptive: Flexible supports that address the circumstances and conditions of the individual and their families involved in the diversion process.
 - Services are blended with ownership: Put power and agency into the hands of community agencies, community liaisons, and participants. Empower community organizations to respond with a prescription of supports that meets each individual's circumstances.
 - Solicit the internal drive to be different: Provide coaching, mentorship, and other deep services for those that need it. Empower the individual to choose who they work with and the range of services they access to make transformational change.

In short, rather than a diversion program that is a predetermined funnel of mandatory steps and services, there is a need for a responsive and restorative system based on community relationships and natural supports that addresses root causes.

- A significant perspective among community members calls for abolition of the criminal legal system, for the decriminalization of many offenses except the most serious – crimes based on circumstances of poverty. They call for strategies that match the nature of the problem. If one accepts that the system is inherently racist and destructive to BIPOC communities, then “the system itself is not the place to create solutions.”²
- There was significant feedback objecting to the framing of the Racial Equity Toolkit questions:
 - The compartmentalized nature of the questions does not allow for a larger

[2] To quote from the Marshall Project: “Ultimately, abolition is a practical program of change rooted in how people sustain and improve their lives, cobbling together insights and strategies from disparate, connected struggles. We know we won't bulldoze prisons and jails tomorrow, but as long as they continue to be advanced as the solution, all of the inequalities displaced to crime and punishment will persist.”

examination of the system itself. The RET questions, for example, assume a perspective of reform within the system, which was not the perspective put forth by most community participants in the RET process.

- It is designed to be applied to individual programs and compartmentalizes responses not providing space for intersecting and compounding factors.
- Objections were raised in questions framed to 'reduce harm' (as if less poison is still acceptable).
- Widespread request to not use the term 'criminal justice system,' since it is viewed as unjust, results in this report of the term 'criminal legal system.'
- There is a call for urgency from community participants, who are deeply aware of the damaged lives, damaged families, and multi-generational trauma experienced in BIPOC communities from entanglement (trapped) in the criminal legal system.

A full overview of policy and program recommendations are in the Strategies section, beginning on page 19. Attachment B contains the complete feedback list in the format of the expanded RET questions.

Step 1: Set Outcomes

The following outcomes resulted from CAO staff discussions at the launch of this project and the RET focus group sessions:

Outcomes within the criminal legal system:

- The punitive nature of the criminal legal system be eliminated for a wide range of crimes.
- Diversion policies should disrupt, not continue, damaging impacts on BIPOC individuals. For example, criminal history is not an objective standard absent from the impact of systematic racism.
- Diversion policies be designed and implemented in ways that are mindful of how social poverty impacts people's story and provide effective responses.
- Major culture shift takes place within the CAO. *Focused work within the CAO results in understanding the impacts of institutional and systemic racism in all the steps in their process, understanding the negative impacts of White privilege and imposition of White normative behaviors on BIPOC communities.*
- *More BIPOC staff be hired in the CAO office, especially those with deep connections in their communities, which could alter outcomes for BIPOC populations. Additionally, there is recognition that, however, the CAO staff identifies their understandings of White normative behaviors and privilege as a larger factor in achieving the desired outcomes.*
- To reduce disproportionality and stop criminalizing in a racially distortional manner: to have fewer BIPOC community members are arrested, charged, convicted, and incarcerated. *Targeting BIPOC in the diversion program can ensure that White people do not receive disproportional benefits from the diversion program/process.*
- Community is a collaborative partner in diversion, and the alternatives “create a village” of effective community-based support.
- The criminal legal system should shift money into the community, and the criminal legal systems budget, staff, and

infrastructure should be smaller.

Community-wide Outcomes:

- Reduction of the number of Black, Indigenous, and People of Color (BIPOC) in jails and prisons.
- Reduction of the number of people with criminal charges.
- Recidivism rates and/or filings will decrease.
- Increases in indicators of community health in BIPOC communities.
- People diverted experience positive results, including increase autonomy, a strong sense of identity, centered in family structure, gaining a significant role in community and understanding the value of sharing their story. They are linked to options for education and employment.
- Family reunification or reconciliation is achieved.
- System costs will go down: divest from criminal punishment and invest in community.

Step 2: Stakeholders Analysis - Racial Inequities and Root Causes

A. City districts most impacted:

- Areas being gentrified: Central District, Rainier Valley, folks who have displaced.
- Houseless encampments around the city.
- Downtown Seattle and other areas with high homelessness rates- Aurora, Ballard
- Ballard and Rainier Valley
- South Seattle, Rainier Beach, Beacon Hill
- Northgate area
- Unincorporated areas (Skyway, White Center)

B. Populations most impacted:

- BIPOC: Black, Indigenous, and People of Color, Latinx
- Queen and trans BIPOC individuals
- Individuals experiencing poverty and homelessness.
- Those with behavioral health struggles
- Immigrants and refugees
- Foster Youth
- Formerly incarcerated
- Poor People

"We don't want racism Olympics, but we know that the darker you are, the more time you get"

C. Equity Issues and Root Causes Facing BIPOC People Living in Seattle

Societal-wide inequities:

Institutional and systemic racism is a fundamental issue. This includes overt and implicit racism, macro and microaggressions, discrimination in all spheres of life. BIPOC people often feel isolated living in such a predominantly White city, which is even more so, given that those in positions of power are overwhelmingly White in education, employment, service systems, etc. In this alienating environment, too often, BIPOC individuals victimize each other – horizontal racism.

Lack of equitable access in all aspects of the social determinants of health – housing, employment, schools, health care, mental health care, transportation, healthy food access, childcare, etc. creates a profoundly hostile environment for BIPOC individuals.

- Lack of equitable access to employment opportunities, good-paying, and livable wage jobs. BIPOC individuals do not have equal opportunity in employment, documented in studies and statistics for decades. This is compounded by the criminalization of poverty (referenced later in this report), and the mass incarceration of BIPOC adults in their prime earning years compounds this situation.
- Systemic racism in housing access. Lack of generational wealth from property ownership has long-term negative impacts in BIPOC communities. The skyrocketing costs of housing in Seattle, gentrification, and displacement have profoundly changed the community experience for BIPOC communities. “We don’t live here.” (in Seattle). Severe failure to provide affordable housing options is an institutional failure. Housing instability has significant impacts on BIPOC families, and the criminalization of homelessness compounds the issue.
- Lack of culturally appropriate support for mental and emotional health. BIPOC individuals often do not feel understood by people with power in the systems they have to interact with, such as therapist, social workers, teachers, and others. Recovery from physical, emotional, and psychological injury and trauma is a great need in BIPOC communities.
- Lack of childcare, adequate transportation, food insecurity, and other challenges of poverty was cited.
- Poor performing schools, lack of educational degrees.

Lack of representation – Lack of presence of BIPOC people in positions of power, particularly those with lived experience, who can understand and effectively support them is also a core equity issue. This lack of representation results in services and systems that are not effective in serving BIPOC communities. BIPOC individuals with lived experience are not at the table making decisions that impact their lives.

The myth of the violent offender is a blatant, racist ploy used to dehumanize BIPOC individuals and justify severe, harsh treatment and criminalization of whole communities. The common

narratives in our society blames BIPOC community members for 'lack of success in systems designed to undermine them.

Criminal legal system inequities:

The criminal legal system is inherently racist and harmful to BIPOC communities. These communities are over-policed and over-sentenced, with a heavy-handed presence in neighborhoods.

Racial profiling leads to minor behaviors being criminalized. People are criminalized for not having basic necessities or support. The criminalization of immigration status results in incarceration and deportation, splitting up families.

There is great bias in the discretion of police and prosecutors in who they charge as violent and the charges they put on people. Harsher sentences are given to BIPOC individuals.

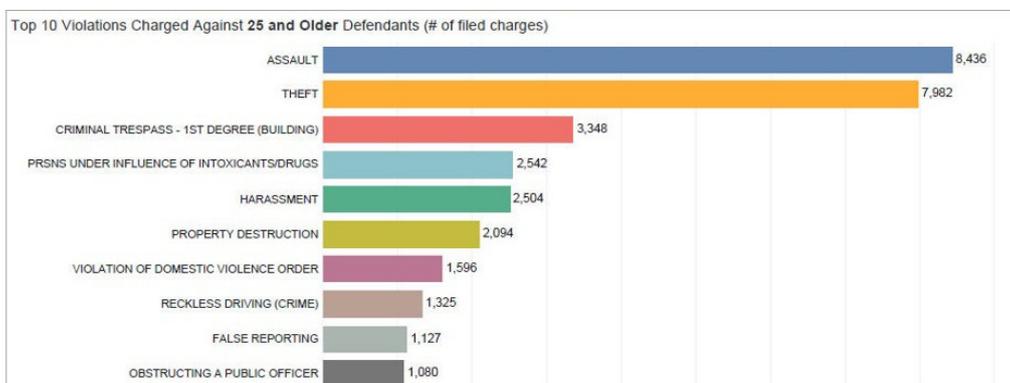
Every point of contact produces disproportionality; the discretionary role of the prosecutor, the arbitrariness of the process for charging, overuse of guilty plea deals, and blind trust in police reports all result in disproportionate, devastating outcomes in BIPOC communities.

What elements of the system are racist or unfair? "The whole thing. All of it. It's DNA. This is why it needs to work on going away, making itself smaller: not keeping itself in place, not coming up with diversions. It needs to divest."

D. Statistical Landscape: Racial Inequity in Criminal Legal System

1) Primary Data

Data provided in this section was gathered by the Research, Planning and Evaluation Group at Seattle Municipal Court and CAO provided the analysis. The Top 10 Violations Charged graph below shows the ten most frequently filed charges against defendants aged 25 and older in Seattle Municipal Court from 2016-2020 ³. The graph shows that Assault and Theft are the top two offenses and are charged significantly more often than the remaining offenses in the top ten. Notably, cases identified as Domestic Violence are included in this data set. It is highly likely if the Domestic Violence cases were removed, Theft would be the most frequently filed charge. Domestic Violence cases will not be eligible for this expansion of the Mainstream Pre-Filing Diversion program to people over age 25.



[3]Seattle Municipal Court 25 and Older Stats-2016 to 2020 with totals; Prepared by SMC Research Planning and Evaluation Group Staff; 5.13.21

The Case Category graph below shows the percentage of cases categorized as Driving Under the Influence, Domestic Violence, or non-DV/DUI from 2016-2020. The expansion of the Mainstream Pre-Filing Diversion program to people over age 25 will be limited to non-DV/DUI cases, representing 57% of defendants and 67% of the cases.

	2016	2017	2018	2019	2020	Total
DI %	DUI 16%, 898	15%, 942	16%, 1,074	17%, 1,100	19%, 920	18%, 4,379
	DV 23%, 1,283	23%, 1,434	21%, 1,365	20%, 1,258	22%, 1,108	24%, 5,752
	Non(DV/.. 61%, 3,427	63%, 3,973	63%, 4,137	63%, 3,977	59%, 2,901	57%, 13,608
Cs %	DUI 13%, 961	12%, 994	13%, 1,165	14%, 1,159	16%, 991	14%, 5,270
	DV 21%, 1,494	21%, 1,751	18%, 1,604	17%, 1,458	21%, 1,335	20%, 7,642
	Non(DV/.. 66%, 4,711	67%, 5,614	69%, 6,057	69%, 5,770	63%, 3,947	67%, 26,099

The Race Group graph below shows the racial breakdown of defendants across all crime types that were filed in Seattle Municipal Court between 2016 and 2020. The race/ethnicity breakdown for the Seattle population from the 2020 census was: 67.3% White; 15.4% Asian; 7.3% Black; 6.7% Hispanic or Latino ethnicity (of any race); two or more races 6.9%; 0.5% American Indian/Alaskan Native; 0.3% Native Hawaiian/Pacific Islander. ⁴

When comparing the census data to the data collected by Seattle Municipal Court to those identified as Black, represented 7.3% of the population, but accounted for 25% of the defendants and 30% of the cases filed. Additionally, according to the most recent census data, American Indian and Alaskan Native individuals account for 0.5% of the population but are 2% of the defendants.

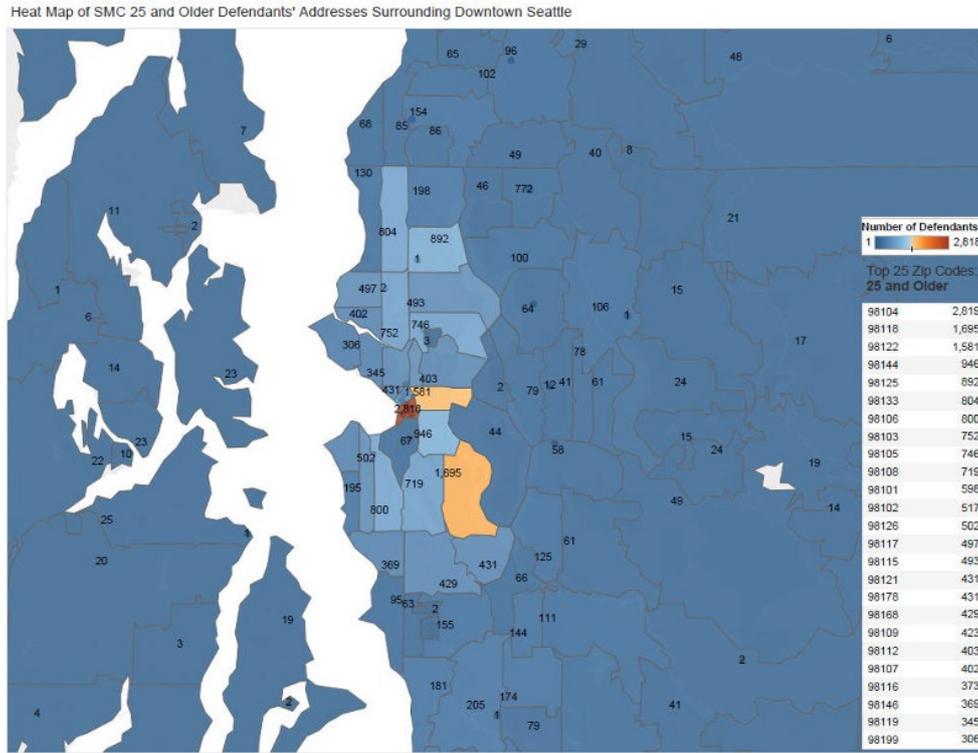
	2016	2017	2018	2019	2020	Total
DI %	AAPI 7%, 356	6%, 368	6%, 381	6%, 364	5%, 262	6%, 1,401
	Black 27%, 1,484	27%, 1,668	28%, 1,760	28%, 1,724	28%, 1,352	25%, 5,630
	AIAN 2%, 134	3%, 160	2%, 147	2%, 114	2%, 85	2%, 443
	White 58%, 3,143	59%, 3,614	58%, 3,727	58%, 3,554	57%, 2,723	59%, 13,164
	Unknown 6%, 335	6%, 366	6%, 357	6%, 384	8%, 377	7%, 1,537
Cs %	AAPI 6%, 425	6%, 463	5%, 465	6%, 467	5%, 321	5%, 2,141
	Black 29%, 2,085	29%, 2,411	30%, 2,613	31%, 2,570	31%, 1,952	30%, 11,631
	AIAN 3%, 185	3%, 246	3%, 237	2%, 174	2%, 119	2%, 961
	White 57%, 4,057	57%, 4,787	58%, 5,091	56%, 4,703	55%, 3,443	57%, 22,081
	Unknown 6%, 414	5%, 452	5%, 420	6%, 473	7%, 438	6%, 2,197

It is important to note that in the CAO's experience, race is generally based on the subjective interpretation by a Seattle Police Department Officer. Some defendants at arraignment ask the Court to correct their identified race, but that does not regularly occur. Consistent with the categories of race established by the Federal Bureau of Investigations, the categories are limited to White, Black, American Indian/Alaskan Native, Asian/Pacific Islander, and Unknown.

[4] Population estimates from July 1, 2019. <https://www.census.gov/quickfacts/seattlecitYWashington>

. In the CAO's experience, Latinx communities are generally categorized as White or Unknown. The Seattle Police Department report system can now capture ethnicity as Hispanic or not-Hispanic, but that descriptor is not yet being consistently used or reported.

The Heat Map below shows the highest concentrations of defendant's addresses, listing the top 25 ZIP codes.⁵



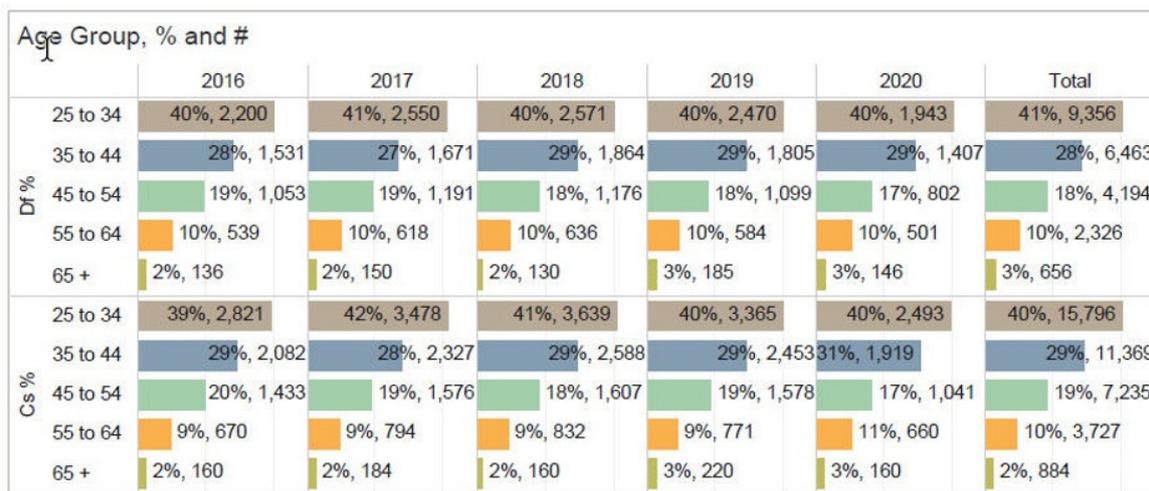
The Top 10 ZIP Codes table below provides the neighborhood information for the top ten ZIP codes for defendants based on their given address. The large number of defendants with addresses downtown is likely due to the number of shelters in that area. Eight out of the top ten ZIP codes have also been identified as Economically Distressed ZIP codes by the Seattle Department of Finance and Administrative Services.

Top 10 Zip Codes of Defendant's Addresses		
Zip Code	Neighborhood	# of Individuals
98104*	Downtown/ID	2,819
98118*	Rainier Valley/Rainier Beach	1,695
98122*	Central District	1,581
98144*	North Beacon Hill	946

[5] Seattle Municipal Court 25 and Older Stats-2016 to 2020 heat map; Prepared by SMC Research Planning and Evaluation Group Staff; 5.14.21

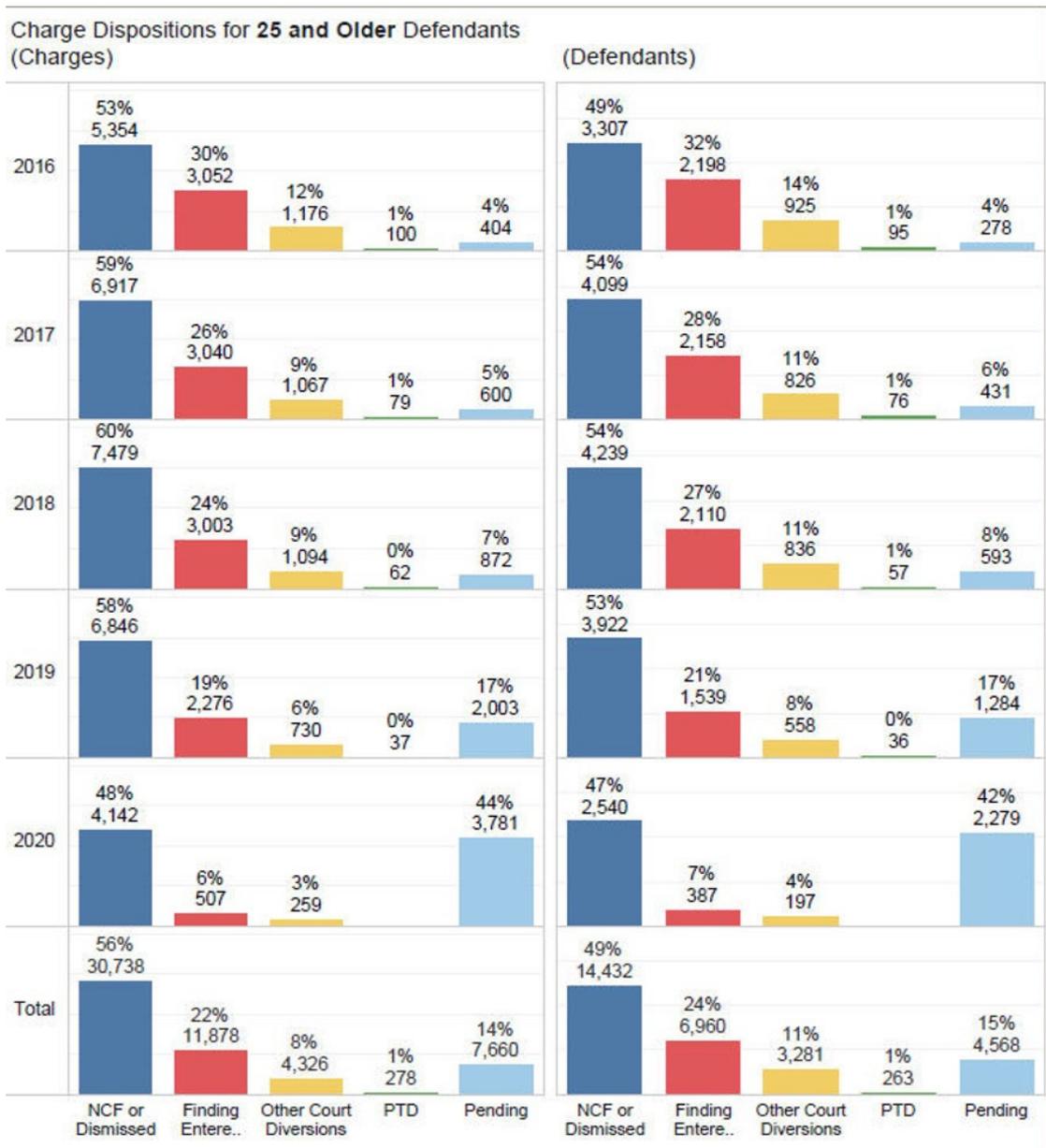
98125*	Lake City/Northgate	892
98133*	Bitter Lake/Northwest Seattle	804
98106*	Delridge	800
98103*	Woodland Park/Green Lake	752
98105*	University District	746
98108*	South Beacon Hill/ South Park	719
*Economically Distressed ZIP codes by the Seattle Department of Finance and Administrative Services most recently in 2017.		

The Age Group graph below shows the percentage of defendants and cases by age group. It is notable that the 25-34 age range represented 41% of defendants 25 and older, while those 55 and above represented a total of 13% of defendants.



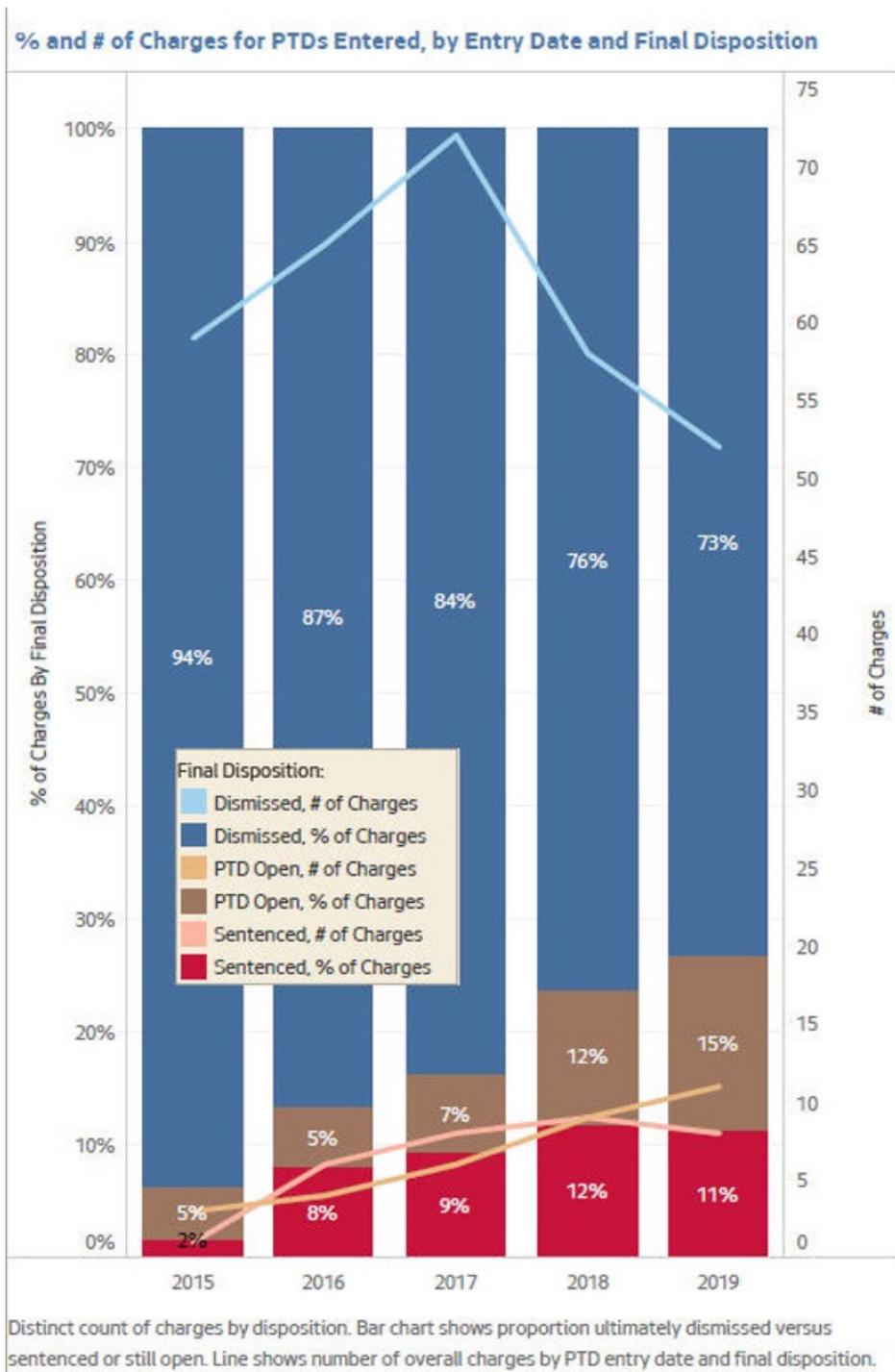
older defendants between 2016-2020. On average, 56% of charges are not initially filed (no charges filed-NCF) or dismissed. Some of the not initially filed charges are later filed when additional evidence becomes available, such as blood test results in DUI cases or when victims/witnesses are reached. When an officer books a person into the King County Jail, the officer identifies a potential charge. When the Seattle City Attorney's Office decides whether to file criminal charges, they can file the charge the officer identified, file a different charge, or decline to file any charges. In either of the latter two circumstances, the City Attorney's Office would file an NCF. The Pre-Filing Diversion programs do not divert charges that would otherwise be declined. The Pre-Filing Diversion program is committed to not widening the net of the criminal legal system.

As part of plea bargain negotiations, many defendants will agree to plead guilty on one or more charges, and the City Attorney's Office agrees to dismiss one or more charges. Additionally, many cases are dismissed if a victim or witness is not willing or able to testify or if subsequent information is revealed that establishes a dismissal is appropriate. Almost a quarter of the charges result in a finding of guilt entered (seen below as "Finding Entere.."). Only 9% of charges are post-file diverted (seen below as "Other Court Diversions" and "PTD," which are Pre-Trial Diversions).

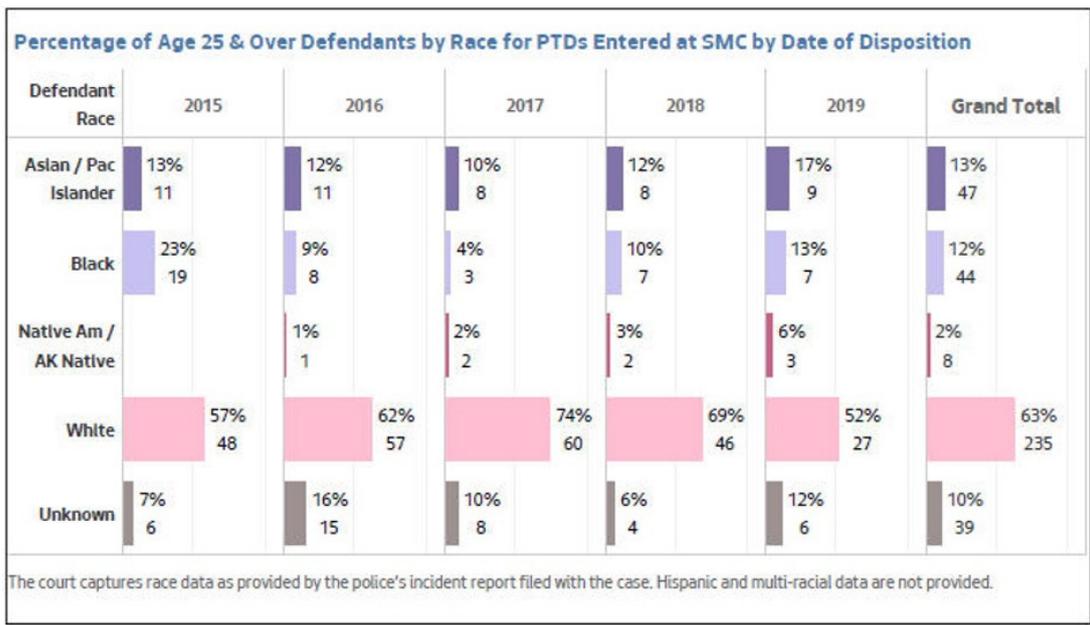


Other Court Diversions include Deferred Prosecution, Deferred Sentence, Dispositional Continuance, and Stipulated Order of Continuance

In contrast to the Pre-Filing Diversion Program, Other Court and Pre-Trial diversions are post-charge diversions which means that a criminal charge has been filed, and the Court will monitor the diversion. Pre-Trial diversions are a type of disposition offered by the CAO to first-time offenders. It is generally a three-month dispositional continuance. If the person completes an average of twelve community service hours and has no new criminal law violations, the case will be dismissed at the end of the three months. According to the % and # of Charges for PTDs Entered chart below, you can see in 2019 that 73% of PTD's entered were dismissed because the individual completed the necessary obligations. 15% of the cases from 2019 were still open when this data was collected, and 11% were sentenced for failing to complete their obligations.



The Percentage of Age 25 & Over Defendants by Race for PTDs table below shows the percentage of defendants 25 and older entering PTD's based upon their race. As described previously, racial identification is generally based on the subjective interpretation of a Seattle Police Department officer. The 5-year average data shows that about 63% of defendants offered PTDs were White, 13% were Asian, 2% were Native American/Alaskan Native, and 12% were Black. When we compare these percentages to the Race Group percentages for 25 and older defendants, we see that 57% of cases involved White defendants, 5% were Asian, 2% were Native American/Alaskan Native, and 30% were Black. Based on those figures, the most significant disparity that we see is the disproportionately low number of Black defendants in the PTD program and the disproportionately high number of Asian and White defendants having the benefit of the PTD program.



This chart highlights the crux of the matter for this diversion program focused on BIPOC communities and the factors discussed in the RET process. Based on the data on Race Group percentages on page 9 and comparing it to deferment by race in this chart, it appears that White defendants are disproportionately less likely to face criminal charges, yet when they get to court are more likely to be offered diversion. In contrast, about one-third of Black defendants were given these opportunities. Because of these disparities, the Seattle Reentry Workgroup recommended expanding pre-filing diversion for those aged 25 years and older, particularly focused on BIPOC communities.

The CAO hypothesizes that the main contributor to the racial disproportionality happening in the PTD program is because PTDs are generally only offered to individuals with no criminal history (first-time offenders) and people of color are statistically more likely than White people to have criminal history. This leads to a disproportionate amount of White people being offered and taking advantage of PTD offers more frequently than people of color. The CAO has decreased racial disproportionality in the 18-24-year-old Pre-Filing Diversion program by opening the program to people with criminal history.

Additional factors that result in this glaring disproportionate data, listed in the RET process, include: institutional racism, arbitrary decisions by prosecutors, adverse circumstances experienced by individuals, and prescriptive requirements to participate in deferment

2) Negative Impacts of Becoming Entangled in the Criminal Legal System:

Effects on BIPOC individuals of becoming involved in the criminal legal system can be stark and life-changing. Incarceration, surveillance/probation disrupts your life.

- Criminal History = Economic Barriers. Loss of employment leads to loss of jobs and employment opportunities, barriers to housing, student loans, licensed job sectors, homelessness.
- Legal financial obligations can create heavy burdens, court appearances impact people's jobs and earnings. There are also major financial burdens on the family - visits, bonds/bail, commissary, and other needs.
- Family separation, Jail time, takes the individual away from kids and family—results in damaged or severed relationships.
- Extreme stress and impact on mental health. Depression and hopelessness. Psychological impacts of being seen as and treated as a criminal.
- Some misdemeanor convictions can lead to future felony liability-- for example, DUI, vehicle prowl, domestic violence. The charge follows you into future legal situations/cases, and many are likely to remain in the system.
- Probation can lead to jail or prison for minor violations.

3) Factors That Cause Someone to Become Criminal-System Involved:

Note that these factors are almost all circumstances and environmental causes.

- Racism
- Poverty, lack of resources, and economic opportunity. Being locked out of employment, BIPOC individuals turn to activities that lead to contact with police.
- lack of mental and emotional health supports
- Behavioral health issues being criminalized.
- Family and societal influences add to this vulnerability. Family breakdown, at times caused by mass incarceration policies, lack of familial support,
- Problems with substance abuse.
- This dearth of positive options can result in peer pressure and toxic masculinity.

Step 3: Determine Benefits and Burdens/Harms

*Please note that the benefits participants listed in the questions below are based on the assumption that the diversion program would be established in the ways they recommend. For example, if a community-led Restorative Practice were used, there would be multiple benefits for individuals, families, and the community. Many RET participants also distinguished between theft that harms community members and small local businesses and theft from corporations. They recommended community-based restorative practice for the former, with a different response for the latter. This is covered in detail in the section on Program Recommendations.

Benefits of a Successful Diversion Program

- BIPOC communities see a decrease in imprisonment in their communities.
- Stopping the harm from conviction, incarceration, and debt in the BIPOC communities can begin to decrease the generational harm from the criminal legal system.
- Reduce the grasp that the criminal legal system has on the BIPOC community members.
- In the long run, financial benefits will be substantial, reduced costs in the criminal legal system, greater investments in people and the community.

Benefits for Community

- Restorative practices used in the diversion program would benefit the whole community.
- Increase in peace and safety in the communities. It will reduce recidivism and provide more public safety within communities of color.
- It can address root causes and bring healing.
- Community-based projects help bond people to the community they live in and restore and build community engagement.
- Involvement of business community stepping up will have many benefits. A successful diversion program will reduce the cost to taxpayers.
- “How does a small band-aid help a giant wound?”

Potential Harms/Burdens of a Diversion Program

- Diversion programs can exacerbate racial disparities if not properly implemented. It will be important not to have ruled out diversion eligibility for criminal history.
- Should not be any financial barriers to diversion, such as prior fines, fees, or restitution requirements - including victim compensation - should be imposed on the individual participant. Instead, create accountability as individually designed in a restorative justice process.
- Over-prescribing requirements or creating unrealistic requirements. Arbitrary time commitments that are too rigid or unattainable do not set people up for success.
- Potential harm can result if disproportionality in access to diversion continues. It is critical that each step in the process does not exclude BIPOC individuals but rather intentionally serves them. Outreach must be really effective in contacting people and fully informing them of the diversion options. Sufficient data must be tracked to assess each step in the diversion process.
- Creating a one program fits all people approach: putting all the resources into 1-2 existing programs. Instead, allow a few more programs to excel and support our community.
- Not doing an environmental scan to invest resources properly and address gaps. It could be harmful if people aren't able to define their own needs. Lack of appropriate resources, lack of culturally relevant options, and not having enough gender-specific services could mean individuals are not able to reach positive benefits.

- “The system presents itself as a savior. But it is in the way of the solution if it continues to take in the resources and not invest them in the community.”
- Not addressing root causes: Developing ‘diversions’ here and there for small pockets of the system distracts from the imperative to address root causes. “It could hurt if you believe the diversion program is the solution to the problem. A minor less of harm is not acceptable.”

"No criminal history bars will be key to ensuring that the program isn't harmful, given over-policing and racist systems."

Step 4: Advance Opportunity and Minimize Harm

Obstacles and Barriers to creating change in the Criminal Legal System:

- The people within the system benefit from the system, from those in leadership, in positions of power, those with good-paying jobs. Those in positions of power are ego-invested and refuse to give up power. They can do this by getting out of the way and giving up funding, jobs, etc. *“At this point, it is willful ignorance.”*
- People in the bureaucracy who make decisions aren’t close to the end result, allowing them not to see humanity. They see their role as a job and elude accountability for its’ impact.
- There is institutional racism, lack of cultural competency. There is also apathy on the part of people and segments of the society not adversely impacted.
- Fear of making the news—what happens if we give someone a chance? Prosecution sometimes happens out of fear. Some community member believe there is a culture of convictions as ‘wins,’ career advancement agendas in Prosecutor's office. Police union is too strong and upholds racism and bias.
- False narratives about our community. We need to see the HUMANITY in all people.

Strategies

A) Policy Strategies

- Acknowledge and address racist roots in the system
 - It is not enough to acknowledge that institutional racism exists: we must intelligently create alternatives systems.

- Invest in Community and divest from the criminal legal system
 - Acknowledgment of transferring funds to invest in people rather than punching (damaging) people. There was a widely expressed view to structure the response around a divestment of funds from the legal system and investment in community response. Others call for more resources for reform.

- Racial Equity requires changing the dynamics of power
 - Create a dynamic paradigm shift that looks at and changes how power is distributed to make decisions. Maximizing choice and direct decision-making by BIPOC individuals and community at every level is required.

- Cultural shift is required.
 - A widespread commitment to end mass incarceration is necessary. Cultural change is imperative and buy-in from all departments involved in the legal system, from police to prosecutors, to courts. More training for people responsible for arrests, charging, and sentencing decisions was offered as a strategy.
 - Increase BIPOC staff at all levels. Hire people who come from and understand our communities throughout the system. Not just any BIPOC individual but those with lived experience or deeply grounded in community)
 - Decriminalize poverty and homelessness – crimes of poverty should not be considered crimes but incidents to refer to community response.
 - Automatically vacate records after a period of time
 - Take the profit motive out of incarceration. Un-privatize services.
 - “If the system remains, critical to stop incarcerating/surveilling people and to provide low barrier pathways for dismissal for all types of cases and situations.”

Funding Diversion Programs

Among community members and CAO staff, there was a range of views regarding funding diversion options that warrant reflection.

Community Voice: A major theme and expectation that emerged from the community's perspective was for the City to commit to divest from institutional systems that destroy or undermine community and invest in healthy community-based responses. The expectation of divestment includes a transfer of resources. “Current framing of programming and budgets does not take into account that diversion could be viewed, not an add-on cost, but rather a redirection of public resources into community-based responses that can be both more effective and less costly.” This view creates an expectation widely held in BIPOC communities, that if diversion programs are run effectively and continue to be expanded as recommended, the result would be a reduction of budgets in criminal legal systems and an increase in funds for community. Some people believe that the divestment should come from within the CAO: CAO would stop some of its harmful prosecution and reinvest those funds in a diversion program.

All that were engaged spoke to wanting diversion to be owned and controlled by community. Some people expressed that diversion must not be housed within or under CAO's control in any way. From their perspective, to put the funds within an inherently racist system is not a rational strategy to achieve racial equity. They call for investment in

community supports, empowered to design and implement what is best for those eligible for diversion services. Others were open to expansion of the young adult model which is that CAO partners with a community group to own the diversion, but the funds are distributed via contract between CAO and the partner.

It is important to note that, eventually, the community overall expects resource investments to shift. There is an acknowledgment that BIPOC communities have become fractured and displaced due to many factors. Investment in community resilience is essential to address core circumstances that give rise to the criminalization of BIPOC community members.

CAO Voice: In the current structure, the Pre-Filing Diversion Programs provide budgets to community partners to create diversion programs, according to the conditions set in an RFP. These funds are added to the CAO budget. While Pre-Filing Diversion programs do require additional CAO staffing, the goal of those staff is to divert appropriate reports from ever having to become court cases, thereby diverting individuals from ever having to touch the court system.

It took four years to develop all the diversion programs in large part because the City Attorney's Pre-Filing Diversion team lacks funding for needed staff. The CAO is ideologically committed to expanding pre-filing diversion, but expansion requires increased staffing and funds for community partners.

B) Partnership Strategies

"The term 'diversion' signifies that the system should be the primary part of diversion, allowing people to move into an alternative, community-led system."

Make Community Investment the priority choice

Investments in community systems would enable a community response in the diversion process to nurture and sustain relationships between organizations, so community resources are logically provided or imposed as interventions. This investment can occur at all levels – funding effective community-led organizations to operate diversion programs, funding self-defined capacity building supports for these organizations, designing a diversion program that enables community-led responses and supporting individuals' capacity to make healing and transformative choices in their lives.

Community-led

Community members presented a vivid description of the community-led design and implementation beyond the current City mechanism of contracting through an RFP, which includes setting services and options in advance. Main recommendations include:

- Create a network of options for services, perhaps using a participatory budgeting process or other innovative design methods.
- Community acting together: Enable a community response, self-directed by community members and those with lived experience. For example, providers in current effective diversion programs look at people's immediate community support network: family, natural mentors, their natural supports—engagement by many, not just those that get paid.

- Cross-cutting connections among services, supports, and cross-sectional treatments.
- Optimize the self-directed model and maximize decision-making by the individuals impacted.
- Similarly, smaller agencies in the community supportive network determine what capacity they need and from whom.
- People with lived experience expressed a requirement that diversion would only be worthwhile if it can be designed and run by people at the ground level, including those directly impacted by the criminal legal system.
- View diversion as more of a process versus a program.
- Some believed that charges should be declined upon entry into a diversion program, and others believe that charges should be declined upon completion.

Using a social equity lens to maximize benefits for BIPOC individuals and communities is critical, including BIPOC community members providing oversight.

C) Program Strategies

The diversion program must stop treating the individual as the problem. Address the circumstances that led to criminal behavior, avoiding the demonization of a person or group.

Using a strengths-based approach, with resources to meet needs:

- treat the issue more as a behavioral health issue than a crime.
- Have a diversion/advocacy model that promotes self-determination for survivors and self-accountability for people who cause harm.
- Help participants develop critical thinking skills.

The Diversion Program should be focused on addressing resources and providing foundational services. Wrap-around services - Including family reconciliation, drug and alcohol services, and mental health services. The Social Determinants of Health need to be addressed.

- Mental health needs to be addressed & be a focus in the program (from program design and resources committed)
- People need to have their basic necessities met (stable & safe housing, food, healthcare)
- Provide educational and job development so that individuals have access to economic mobility and stability.
- Partnering with organizations that provide these services to adults, such as mentorship/life coach support in a mentor/mentee program, cultural identity, and positive self-image.

"This all sounds like Healing Centered Engagement"

- Peer-based interventions
- Licensing help, assistance with identification documents, employment support
- Long-term care of the individual if needed.

Culturally Responsive Behavioral Health Supports - the program should have counselors, case managers, and community members as part of the program.

- Create a genuine alternative based on restorative practices.
- Diversion should be a healing process for the individual and community.
- Include reunification of the person with their family & support in this process.
- Healing circles

Establish a set of principles to guide design and implementation

- as much money as possible going into the hands of the people in the diversion process.
- clients choose who they work with and the range of services they access
- use community-driven way of selecting agencies
- contract with agencies with staff and leadership with lived experience

Build community, keep the individual in the community:

- Fund community-based projects that create bonding and provide meaningful service to the community.
- Community Service Social Justice Projects restore and build community engagement amongst people.
- Allow people to make amends by becoming community involved.

Build capacity that supports community-led investments. When we invest in community, we should be thinking about long-term impacts. Examples include:

- Community leaders with lived experience can be certified peer counselors and behavioral health specialists. Flourish Agenda, Dr. Ginwright's organization is now certifying Healing Centered Engagement Specialists.
- Being able to bill Medicaid or managed care = less reliance on systems for funding and supports more community-based behavioral health systems.
- Program centered in client-choice: Fund or assemble the capacity for the range of services, and the client chooses (with support) which services to use. After baseline funding to establish capacity, Agencies in the network are reimbursed for effectively serving clients' needs and not on pre-determined services defined and limited by funders with no connection to those with lived experience.

***"I do not want
this program to
just fund the
nonprofit
industrial
complex"***

Prior to launch: Conduct an Environmental Scan

Instead of the current system of picking a few agencies that pass the scoring process, we need to understand what is already out there and be intentional about creating the spectrum of services needed, funded at adequate levels. Importance to know the continuum of service and who is good for the community in delivering these services and ask the community who is trusted and doing effective work. Who can really handle this diversion program well for BIPOC adults?

What are the critical supports that are missing?

Example: life skills/life coaching beyond a one-day workshop. "If what I need is someone to meet with me long term, to help me be accountable and teach me what accountability is, a life coach to ask me the right questions at the right time. Sometimes a person doesn't know what they are missing because they never had it."

Criminal Legal System Strategies

- Appropriate response to crimes of poverty - treat it like a survival crime.
- Criminal history should not be a part of determining eligibility to diversion or a barrier to accessing resources. There is no acknowledgment that individuals have been victims too.
- The diversion/community response should be pre-filing w/o arrest (rather than occurring after a person is charged with a crime in the system)
- Making as many offenses as possible eligible for not having a criminal legal system response, victim compensation/restitution, community restitution while not filing criminal charges.
- Need to limit one's contact with the criminal legal system, starting from when the crime is committed—those entering the diversion program should not be charged if they go through the program.
- Offenses are handled at the lowest level. No criminal history for a minor crime. Boston and Baltimore⁶ have decided not to prosecute certain cases.

"If I can access that gift within me, that will motivate me to see the jewel and gem that I am, that is transformational. This is often what causes that person to make the shift"

"Dismiss charges automatically without having to 'do anything' in return. Since there is acknowledgement that the system is harmful and racist, a person does not have to "earn" their freedom from harm"

[6] <https://eji.org/news/baltimore-ends-prosecution-of-drossession-and-other-low-level-offenses/>

Additional recommendations to minimize or eliminate harm in BIPOC communities:

- Reduce or eliminate fines/fees
- Support programs to vacate charges and amnesty events regarding court debt
- Policies to automatically vacate records – expiration date
- Get rid of the "game" aspect of the system (for example, prosecutors wanting to have wins/convictions)
- Pathways out of the system even once already in
- Not prosecuting commercial theft and criminal trespass offenses.
- stop the harm of the criminal legal system, including conviction, incarceration, and debt.
- Ensure there are no loopholes around which crimes are eligible for diversion so that officers can't exclude people from diversion.

D) Specific Diversion Program Questions

CAO staff requested community input to questions regarding specific charges and actions taken by CAO in response. This feedback is provided below.

A. How should the City respond to retail theft and criminal trespass from a commercial establishment?

There was a strong consensus from community members that there should not be a response from the city that is penalizing or creates harm. Connect them to the Diversion program, which can design a community response, focusing on the individual and understanding why they acted this way.

- Connect them to resources and support the flourishing of the individual instead of punishing them.
- Use restorative justice response, including the possibility of community restitution.
- Reframe for the City: What is the City's responsibility to folks who don't have their basic needs met?
- Use informed community experts with racial equity analysis and research, local and national, to inform your direction

B. What role should the City have when one person is alleged to have committed violence (Assault) against another person? [It will be important to note that we are talking about misdemeanor assault which would be no substantial injury.]

The City should not have a role. A restorative model is best in a response by the community. However, assaultive behavior in domestic violence settings needs to be addressed. It is devastating to the whole family. Yet some believe, domestic violence can be healed using restorative practices.

The person who caused harm and the person harmed should be at the table for resolution, with trained facilitators. Address why the action happened. Instead of restorative, it is transformational.

There is great bias in the discretion of police and prosecutors in who they charge as violent and

and the charges they put on people. The community doesn't have the power to decide/intervene and give support.

C. Should more people go through a less intense program or fewer people with more intensive and long-term support?

The majority of RET participants prioritized reaching the most people. Acknowledging that a significant number of people in a deferment program would not need intensive services, the program could respond to the need level. Have to offer choices, assessment, and self-selection to decide how to serve the individual. It was also recommended that criteria for less or intensive long-term services be based on the criminal history and offenses.

This is a false dichotomy. It needs to be a process, not a pre-defined program, that is tailored to respond to each person. "Things are effective when they are specific to the people, their circumstance and their trauma."

There was a strong sense of urgency to act, aware of the devastating harm the criminal legal system now causes in BIPOC communities; as many people as possible should not be entangled in the criminal legal system.

"When you look at a dichotomy between less/more, you cheat yourself out of the real experience. It has to be situational based on what the person needs. It has to be based in relationship."

D. Meeting needs of harmed parties.

There should be a remedy to the victim in the mode of Restorative Justice processes.

Remedy can take many forms besides financial obligations. An option of mediation or circle could result in apologies, restitution in other forms besides financial. Allow people to make amends by becoming community involved.

Necessary support to help with healing and restoration should be included. Resources such as a victim compensation fund could be established with government funds or utilizing victim support resources. Fundamentally, the perspective is that the primary repair is in personal accountability and restoration of relationships, not only monetary solutions. For crimes of poverty, applying financial burdens becomes an insurmountable burden.

RET participants expressed a distinction between personal harm and infractions against companies. With the ability to have loss prevention and insurance, large corporations should not be considered a harmed party for purposes of this discussion.

E. Input on funding levels, program duration and organizations to provide services

Funding:

- *\$750,000 per agency, fund at least five organizations*
- *multi-million dollar budget*
- *Offer most intensive services and scale based on how many people you anticipate serving*

- CAO needs more funding for staffing for program implementation (i.e., there would need to be an increase in the criminal legal system budget), and currently, the office is understaffed
- However much the system invests in incarcerating people, it should invest in community

Program Duration:

- Shouldn't set an arbitrary time limit for support
- More a process than a program, based on a person's need and support in community

Types of Organizations:

- need a collaborative: diverse services, community liaisons, and groups allow people to choose
- Be strategic in selecting agencies with a good track record in the work and good relationships in BIPOC communities
- Organizations led by community members, including staff with lived experience with the criminal legal system
- Organizations doing the work and also involved in and driving systems change
- Anti-racist organizations, rooted in abolition
- Capacity building for organizations is essential.

F. Additional Recommendations:

- Mechanisms to gather racial and demographic data need to include identifying Latinx/Hispanic individuals. Currently, this information is not asked. We have no data on the impact of Seattle's criminal legal system on the Latinx population.
- Vital that we act with urgency, given the harms of the system
- Highlight immediacy -provide support to individual and harmed party as well.
- Need to work through a transformative justice lens and think outside the box. Work with other programs implementing divestment and redirection of funds to community supports.
- Can we tap into some national progressive prosecution organizations for CAO support and guidance?
- Diversion program should not focus on the "success" in the program because they are disparities seen in the idea of successfulness.

- Establish robust methods to dismantle harm to BIPOC communities from the criminal legal system:
 - Allow all cases that aren't diverted to be eligible for community court
 - Pre Case Services, i.e., therapy and behavioral assessments
 - Create pathways out of the system even while inside
 - Reentry programming that is tailored to address needs
 - Opportunities for dismissal of charges
- Don't tokenize community members. There are BIPOC individuals without an informed analysis that offer harmful/uninformed feedback.
- Concern that this diversion program isn't fundamentally shifting power. At the end of the day, the prosecutor still holds the decision about how this program is going to be developed and executed

Step 5: Evaluate, Be Accountable

Focus group participants and CAO both emphasized the importance of data. CAO has committed to robust data capture and transparency for the pre-filing diversion program. CAO sends an annual report to community members and stakeholders with details of the year's diversions for the young adult program, including how many people were referred, diverted, and demographic information.

RET focus group participants made several recommendations:

- Capture data when it is implemented: who was served and outcomes achieved. Maintain accurate data based on equity. Collect quantitative and qualitative data including feedback from participants and anecdotal feedback.
- Piloting the program can be effective and informs the areas for improvement and scaling up.
- Adequately fund from the beginning and if there are cost savings in the system, reinvest to expand the diversion program.
- Create awareness to understand the benefits. When success occurs, celebrate publicly.
- How do you inform the community? Can it be decentralized into individual communities?

Two primary themes surfaced from these focus groups. One strategy shared pointed out that some participants felt that an inside (CAO) and outside (Community) strategy is necessary to dismantle institutional racism to increase diversion opportunities for BIPOC community members. The Second strategy came from an abolitionist view that believes that—the Institution—should defund itself and fund community organizations to develop and manage diversion programs unencumbered by institutional bureaucracy.

Although everyone believes that diversion can be beneficial, how it is implemented and financed brings various perspectives. Some believe abolition is necessary, and others believe systems are required as community-based solutions are scaled up to serve greater numbers. These two strategies came from community members who have lived experiences, systems knowledge, designing social programs, developing curriculum, and social work experience. This was a winning combination for recommendations found in this report.

This report comprehensively views two focus groups, whose voices span broad perspectives of BIPOC communities. The thinking was dynamic for addressing the action steps of RFQ/environmental scan, RFP, and funding. What was clear is the growing declaration for systems funding to be reduced and for programming to be community-led. Consequently, part of the purpose of RET is to review the impacts on BIPOC populations. With this intention, for the new diversion program to be successful, targeted methods will be necessary to ensure diversion programming works for BIPOC people and that White people are not the primary benefactor of diversion opportunities, as the data shows.

It should also be noted that there will be successes and lessons learned to continue reform efforts in the development and implementation of diversion programming. Generally speaking, some may call these lessons failures. A statement made by a participant, “we should not view this as programming; it is a process.” Thus, it will be imperative to view the diversion process as a long-term approach for success.

Finally, a diversion program will be successful if certain conditions are met. First, understanding the impact of racism within the CAO and society at large. Second, recognizing the roles of the community as a resource, utilizing its assets as a way of authenticating future plans. Third, honoring promises with the recognition that this cannot become a check the box process and forgotten. Fourth, the CAO will utilize the community recommendations and create actions shared with community members for purposes of accountability and trust. Fifth, that prior criminal history is not a deterring factor for diversion. In combination, these conditions are the hallmark for creating a diversion process that's equitable for BIPOC individuals in the City of Seattle.

ATTACHMENT A

Racial Equity Definitions

CAO-Focus Group 1

**Note: This question was not asked for the second focus group because of the second focus group only meeting for two sessions*

How do you define Racial Equity? And what does it mean to you?

“When I think about equity, it means I’m going to give the client population I’m working with the resources that are required to accelerate the pace by which they can succeed and thrive. That’s how I think about it. But I know that there are some folks who think about that as not fair, to give folks more than what somebody else might be receiving. But if we look at our history, we know that there were some people who had a big old head start over others. So, my goal is to put folks on roller skates so that they can catch up. So that that the children and families who had the greatest difficulty are getting needs met.”

“I struggle to define racial equity, but I think some part of it would be to just stop the criminalization of poverty so that poor folks get the same treatment as rich folks. I would like to see People of Color not have to prove themselves and who they are for every door that they knock on; to get an equal chance...I think we are so far from racial equity right now, but I want to do anything that I can to help”

“Bringing some justice to an out of balance system. The system is out of balance. Simply put the darker your skin the larger the sentence. It could be something like that and bringing justice to [it]. Bringing justice to a system that is out of whack. It is set up to allow people with privilege, the opportunities to advance faster than those that don’t have any privilege or those that have to work harder, so that’s what I work on every day, is giving the people that have to work harder to people without privilege opportunities”

“The two questions have been difficult for me, and I find them actually painful. I don’t know that you can define racial equity. At least I can’t. What does it mean to me? I think it means an internal transformation of character. Because if you don’t start with yourself, you cannot be a contributor anywhere else. There are a lot of perpetrators that sit on zoom calls all in the name of being woke. I think it’s difficult when you have individuals who jump on the bandwagon because its popular. I find it painful.”

“When you talk about equity, it’s difficult. It’s a difficult process to really talk about. But what I do know that it does not mean standing in line 15 to 20 hours to vote. That’s not justice.”

"I think that's hard. I don't have a pat answer for that. I have some ideas about what it should look like, but I don't have a pad definition given all the systems where racism is built in from the very foundation... For me it would mean we are not disproportionately killed by the police, it would mean that our children aren't disproportionately disciplined in schools, it would mean having the same opportunities to get loans and to get jobs and to not be discriminated against...It would look like living in a fair and just society where you don't have to give your children of color the speech and you don't have to worry about them dying every time they leave the house. So that's what an equitable society would like to me."

"I bump what everyone else is saying about racial equity because again, it's new to me. I do want it to be all of us or none of us approach for individuals that have hose barriers those challenges, those obstacles to be able to get that same new fairness and equal access to resources because building relationships and resources are key to restoration"

"I feel like it's really about eliminating disproportionate situations that are connected with race, but also making sure the Black People and People of Color have access to the things they need... There's a lot of the times that we talk about White privilege and people having privilege specifically because they are White. Well, what does that mean for Black People and People of Color? We need to start with dismantling that disproportionately when it comes to race and all institutions and systems and whatever that looks like, but also making sure that we have what we need in order to thrive in this world"

"To me racial equity in the context of this conversation means ending criminal legal systems and coming up with other ways to respond to behaviors and Community...Racial equity for me, it means ending the system and coming up with community responses to and supports to meets the needs of people who are suffering from the harms of capitalism, suffering from a lot of things that many people on this call have talked about today"

"I don't have a padded response. I think it looks different. I can tell you it would include the elimination of policies, practices, behaviors, and messages that reinforce differential outcomes based on race. I can tell you that you know it would include us feeling a sense of belonging and feeling safe. Not having to wonder when we come into [meetings] 'where am I, who am I with, am I safe?'. To not get followed around in the store. To not get wrongfully terminated or wrongfully accused and sitting on death row. It would just look different. And even the criminal justice system has not treated us well. For those who have been convicted of a crime and those who work in the criminal justice system. Actual social workers, paralegals, probation counselors, I don't even know the half of what we've had to endure as Black people fighting in the system and living, working in this system."

“You want to think about racial equity, you know there's so many thoughts that go through my head, I think, echoing the statements that have been said today in so many capacities it's hard to define what racial equity looks like. I think it's easier for me to define what it doesn't look like. But I would say, specifically in this situation like paying attention to the culture and history of this process and ensuring that you know it doesn't continue to impact based on race and impact our black and brown communities further. We talked about access and opportunity, and I think everybody deserves access and opportunity to diversion but data in history shows that even diversions have been inequitably distributed to. So, what does equity mean to me?

Uplifting the cultures and histories and races and opportunities building seats at the table for people who haven't traditionally been included.”

“Racial equity is around folks of color who are racially oppressed having access to various institutions they have not had access to. My understanding is not about system change but about access. ‘You can come be a part of us because the party is over here’. It is appreciated in a lot of ways. It’s important work.

Racial equity [for me] is one of those terms that came out to make the work more palatable to the various systems that we ‘re pushing against. That access. And the work is really about anti-racism work. Both racial equity work and anti-racism work is the meantime work we have to do on our way to liberation work. It is that muscle that we’re fighting because we’re fighting the oppression. We’re fighting to get in we’re struggling to get into liberation work, which is another muscle another skill set.

“Inclusiveness on every level when it comes to systems or like within community, feeling like people feel included without have to ask for that. It’s just a given. And the sense of security for all people to seek out opportunities and just live their lives to the fullest.”

Racial equity is not oppressing anyone. And I think it’s very hard to achieve. No one should be comfortable wherever they are working institutionally that it really is equitable, because it’s not. I think we can inch a little more towards equity if more people realize that these systems are not structured equitably. Maybe we can move on and fix them if we get more people to participate in the system.”

“I also agree that the racial equity definition is really difficult, but I think in my office and what I would to be is that we have a system where someone can understand that it’s a horrible thing to say, ‘well I wouldn’t have done that’ and not understand the privilege and color of their skin, and why that makes no sense. I also look for a system where giving someone a second chance or understanding this was just one little incident in their life is how we view it instead of viewing them as the issue.”

ATTACHMENT B

Jam Board Questions & Answers

Below are the major themes and all of the responses to the questions from both focus groups. Please note that the following is all of the raw data we captured during the focus groups. We are providing so that you—the reader—has access to the responses provided and can make your own decision on meaning.

Key	
Black font	1st focus group
Blue font	2nd focus group

Major Themes:

General:

- The Criminal Justice System (and many other institutional systems) is rooted in racism and disproportionately impacts Black folks & communities of color.
- The criminal Justice System is dehumanizing, harmful, and targets low income BIPOC communities, those who are experiencing houselessness, and those with mental health concerns. There is over policing, over sentencing, and not enough police accountability.
- People are criminalized for not having basic necessities or supports
- The Social Determinants of Health need to be addressed. People need to have their basic necessities met (stable & safe housing, food, healthcare, etc.)
- Mental health needs to be addressed & be a focus in the program (from resources to how the program is built out)
- The criminal justice system needs to focus on understanding the “why” this behavior occurred, then work to provide resources and address needs with the person instead of penalizing the person
- When people enter the criminal legal system, there is an impact and breakdown in the family unit as a whole. The reunification of the person with their family & support in this process ought to be a part of the process.
- Need to limit one’s contact with the criminal legal system, starting from when the crime is committed—those entering the diversion program should not be charged if they go through the program
- Diversion program needs to be created by those who the program would serve; those who have gone through the justice system.

- Diversion programs ought to do an environmental analysis to understand the individuals background and then fill in the gaps in providing resources
- Decriminalization\Decriminalize poverty and homelessness
- There needs to be a connection to community. Community needs to be a part of the process
- Lack of representation of BIPOC staff at all levels. Hire people who come from and understand our communities (not just any BIPOC individual)
- Response from the city regarding retail theft & criminal trespass should be less harmful. In fact, there should not be a response from the city that is penalizing or creates harm. Response should focus on the individual and understanding why they acted this way, connect them to resources & diversion programs, and support the flourishing of the individual instead of punishing. No charges should be filed
- Diversion program should not focus on the “success” in the program because there are disparities seen in the idea of successfulness.
- Provide educational and job development so that individuals have access to economic mobility and stability.
- Be based in restorative justice
- Program design:
 - Program should be focused on addressing resources and providing foundational services
 - Community based projects that create bonding and provide meaningful service to the community. Community Service Social Justice Projects
 - Restore and build community engagement amongst people
 - Provide substance abuse referrals
 - Mentorship/life coach support in program-Mentor/mentee program
 - Long term care of the individual
 - Address basic necessities (provide housing, mental health supports, etc.) that benefit the individual and the whole family
 - Diversion program should be built by community and the people are going through the program
 - Program should be healing process for the individual and community/ Healing centered engagement
 - Diversion program must take a step to stop treating the individual as the problem
 - Should have counselors, case managers, and community members be a part of the program
 - No charges should be excluded from the program.
 - Do not exclude individuals from program if they have a criminal history, if they are more than a first time offender, or for victim compensation
 - Should prioritize more people being able to go through a less intensive program vs less ppl in a more intensive program (want as many people to not go through the criminal justice system)
 - Program should be provided as an immediate response & option to the individual

Other Major Themes:

- Making as many offenses as possible eligible for not having a criminal legal system response, victim compensation/restitution, not having the person be charged by the system
- Criminal history should not be a part of determining eligibility
- “Diversion” term signifies that the system should be the primary part of diversion, community response should be the one that responds

- Emphasizing divestment model—the system should have a restorative response. It should be funded in a divestment to investment model that invests in community responses**
- Highlighting immediacy -Provide support to individual and harmed party as well
- Person getting their needs met changes their mindset (vs. I'm going to get locked up anyways)

Benefits if program runs well:

- Investments in people and the community
- BIPOC communities see decrease in imprisonment in their community, less policing as well
- Reduction in Jails and prisons
- Less harm caused by system
- Basic needs are provided (housing, food, healthcare for mental, physical, and emotional needs)
- Job retention
- Individuals going through the program will have the tools, support, and self-esteem to move forward and have self-autonomy
- Number of people facing criminal charges goes down
- Financial benefits in the long run

1) What are the Equity issues facing BIPOC people living in the City of Seattle?

- Institutional & Systemic Racism
 - Racism, overt, and implicit. Micro and macro aggressions
 - Discrimination
 - We victimize each other--horizontal racism
 - Isolation living in such a White city
 - The system positions of power (that represents the power majority) refuse to give up that power. They can do this by moving out of the way and giving up funding, jobs, etc.
 - [The system positions itself as a savior, which is to divest resources back into the community where the resources, programs and funding belongs](#)
- Criminal legal system inherently racist & harmful + Over policing
 - Criminal legal systems racist and harmful
 - BIPOC Communities are over-policed (3)
 - racial profiling
 - Jails and prisons and criminal punishment system
 - Criminal legal system is used as a pathway to services
 - Criminalization and incarceration of self, family members, friends, and loved ones
 - Too much system contact
 - Immigration & deportation
- Employment (Access, equitable opportunity)
 - Access to livable wage jobs (3)
 - Inadequate employment opportunities (2)
 - Educational opportunities that lead to economic growth and development
- Housing
 - Lack of generational wealth from property ownership--racism within housing opportunities, etc.
 - Severe failure to provide housing
 - Housing instability
 - Expensive rent/mortgages
 - Gentrification
 - "we don't live here" [in Seattle]

- Mental & Emotional health
 - [Psychological injury and trauma \(2\)](#)
 - Lack of healthcare including mental health care that is culturally appropriate
 - Not feeling understood
 - Mental health and disproportionality
 - Lack of cheerleaders
 - We only get a little breather when we have a buffer like our families
- Social Determinants of Health (healthcare, housing, transportation, language access, food deserts, educational opportunities, poverty, gentrification)
 - Lack of childcare (3)
 - Lack of adequate transportation (2)
 - Covid relief
 - Sidewalks to school
 - Language access
 - Lack of healthcare
 - Poverty
 - Food deserts
 - Food insecurity
 - Worry about basic needs and survival
 - Eldercare
 - Poor performing schools
 - Lack of higher educational degrees
 - Educational opportunities that lead to economic growth and development
 - Access to technology
 - How our children come into the world, the school system that is not about educating folks. Lack of and miseducating. Grooming people to think a certain way
 - What isn't an equity issue
 - [Inequitable distribution of resources, funding being invested in the criminal punishment system rather than into addressing root causes such as reparations, poverty](#)
- Representation
 - [Lack of presence of people in positions of power that reflect the communities they are representing/serving \(2\)](#)
 - Inadequate representation

2) Who do you believe is most impacted?

(theme: everyone except cisgender White men and those with higher socio-economic status)

- BLACK/AFRICAN AMERICAN MEN AND WOMEN (6)
- Native Americans (3)
- Latinx Community
- Immigrants and refugees (2)
- non-English speaking/people who speak English as a second language (2)
- undocumented communities
- south end women of color
- trans folks
- queer and trans BIPOC people
- Poor people, lower socioeconomic status, those in poverty (5)
- homelessness (3)
- Folks with financial difficulties. Those locked out of employment because of criminal records.
- families, particularly the children (2)

- There is a ripple effect to not just one person being charged, but the whole family.
- Women and children
- mentally ill, those with behavioral health struggles (3)
- Elders
- people with disabilities (2) (1 from 2nd focus group)
- Taxpayers
- Me
- City or county's budget
- currently and formerly incarcerated
- Foster youth
- Class and income is not as much of a buffer as people think.
- Color is determinate of court outcomes
- We don't want racism Olympics, but we know that the darker you are the more time you get.

3) What city districts do you believe are most impacted?

- Downtown (3)
 - downtown Seattle and other areas with high homelessness rates
- Houseless encampments around the city
- Aurora
- Northgate area
- Central district
- Rainier valley
- Rainier valley-reputations
- Areas being gentrified
- South Seattle, Rainier Beach and Skyway area
- south Seattle and unincorporated areas (skyway, White center)
- folks who been kicked out of Seattle
- Ballard and Rainier Valley
- district 2: south end, beacon
- Renton
- Federal Way
- Kent
- West Seattle
- Burien

4) What factors do you believe cause someone to be "justice involved"?

- Racism (8)
 - Systemic racism, social racism, individual racism (2)
 - especially related for who is stopped, searched, frisked and who decides to call the police
 - racial profiling, discrimination- oppressing people of color, especially black people.
 - Being a person of color and getting a harsher sentence
 - loss prevention officers profiling BIPOC individuals
 - Biased beliefs in law enforcement
- Lack of Mental & Emotional Health Supports
 - Unmet behavioral health needs
 - Unresolved trauma
 - Generational trauma
 - behavioral health struggles being criminalized instead of providing supports not having basic needs met
 - lack of confidence and esteem
 - Mental health

- Lack of support systems
- Economic status & opportunities
 - Poverty (x3)
 - Economics
 - Criminalization of poverty
 - Lack of economic opportunity
 - Being locked out of employment
 - Financial hardship
- Family/Societal influences
 - Family history-I'm trying to be like my Dad
 - Family breakdown
 - Familial support (2)
 - Peer Pressure
 - Culture
 - Toxic masculinity
- Police System
 - Over policing (2)
 - Outdated policy/law
 - Growing up in an over policed neighborhood
 - Understandable distrust of police--(obstruction charges)
 - Biased beliefs in law enforcement
 - Not understanding the codes of power
 - [Prosecutorial Election/Discretion](#)
 - [Poor Police training](#)
- Lack of resources
 - Stealing due to lack of resources
 - Lack of relevant and appropriate community resources
 - Scarcity
- Abuse
- Substance abuse (2)
- Domestic Abuse
- Social Determinants of Health
- Homelessness--folks being charged with criminal trespass, etc.
- Housing instability
- being expelled and suspended out of school
- Failings in education
- [School to Prison Pipeline](#)

5) How could a Diversion program help those who become Justice involved?

"I disagree with the framing of this question as there is no justice in the criminal legal system"—focus group participant

- Provide resources
 - hear from folks what their needs are and try to support meeting those needs
 - Program should provide resources and support
 - Support w/ Basic Needs Beyond Diversion
 - Provide resources instead of incarceration
 - Supportive services
 - help meet basic needs
 - Access to more resources & opportunities
 - help connect with education/job opportunities and training

- important to provide a financial incentive and find a way to compensate people for their time
- Mental health focused services
 - provide connections to supports including case managers, behavioral health counselors, housing
 - Wrap around services - Including family reconciliation
 - Drug and alcohol services and mental health services
 - healing circles -- build community
 - Culturally Responsive Behavioral Health Supports
 - ability to treat the issue more as a behavioral health issue than a crime
 - Help Provide Hope
- Keeps the individual in the community
- Invest in individual
 - The program should help participant discover their strengths and gifts
 - Teach practical life skills
 - Help person see the connections between criminal activity and life impacts
 - opportunity to be seen for your possibility not as a problem
 - Strengths Based Approach w/ Actual Resources
 - have an diversion/advocacy model that promotes self-determination for survivors and self-accountability for people that cause harm
 - The program should help to participants develop critical thinking skills
 - Individual Assessment to figure out the "WHY"
 - [Create new vision for their future](#)
- Prevention
 - Prevent consequences of a criminal charge/conviction
 - Keeps people out of jail/prison
 - avoid all of the harms of the system
 - Reduce the number of times a person touches the system until they finally are no longer in the system.
 - incarceration is expensive, there is a cost benefit to handling cases outside of the criminal justice system
- Decriminalization
 - Decriminalization
 - keeps the individual from having a criminal record
 - No criminal history for a minor crime
 - No Charges After Completion
 - Diversion Should NOT Mean Justice Involved.
 - no charges after the person is referred and makes first connection (that is consistent with the model for youth)
 - No criminal history for a minor crime
 - the diversion/community response should be pre-filing w/o arrest (rather than occurring after a person is charged with a crime in the system)
 - offenses are handled at the lowest level
- Listening to and taking lead from those being served in diversion program
 - hear from folks what their needs are and try to support meeting those needs
 - depending on situation looking at the harm from a holistic perspective and meeting need of who was harmed or lost something
 - [allowing the individual to feel heard- whatever the "why" is, is important to understand](#)
- Program Design:

- It could detach itself from the system as much as possible, it could invest funding in preventative and interventions based in community, it could give up power, it could make itself smaller...
- The way you frame questions impacts the answers you get. When questions are framed in a problematic way, it enables the status quo and re-enforces itself
- The framing of this question is problematic. It can't "help" a situation that the system itself created in the first place

6) How could a Diversion Program harm or be a burden on community and/or those Justice involved? What are your concerns?

- Financial Cost
- incarceration is expensive, there is a cost benefit to handling cases outside of the criminal justice system
- using any amount of funding to support itself (the system). Every dollar that goes into the system is a dollar that isn't invested into community
- Institutional Racism
 - diversion programs can exacerbate racial disparities if not properly implemented. will be important not to have rule outs for criminal history or restitution
 - avoid all of the harms of the system
- Resources
 - Lack of appropriate resources.
 - Not having enough gender specific services
 - over saturation of a specific type of service
- Accessibility
- Pressure anyone to assimilate, so regardless of how helpful it says it will be. It will continue to be a problem.
- It needs to make itself smaller. Even hiring POC is problematic because they are tokenized
- takes ideas from community, co-opts them, they become harmful in implementation and system claims it did its engagement by a process like this
- Program Design
 - could be harmful if people aren't able to define their own needs (if program lacks autonomy of those going through it could be harmful)
 - Over-prescribing requirements
 - important that no fines/ fees -- including victim compensation-- be imposed on the individual participant
 - want to make sure that people aren't facing a case filing even after a connection is made
 - Creating Unrealistic Requirements
 - No criminal history for a minor crime
 - offenses are handled at the lowest level
 - is the family unit a factor or consideration when supporting 24+?
 - An environmental analysis (lack of environmental analysis is harmful, needs to be done)
 - Finding an appropriate balance between the participant's diversion commitment and their personal life
 - insufficient data
 - My concern is that it would target communities and people that are already marginalized.
 - Anything that is not culturally responsive... as system programs never are, there is a missed opportunity, then the system doesn't take accountability ofr its inability to offer appropriate services

- Pros
 - keeps the individual from having a criminal record
 - opportunity to be seen for your possibility not as a problem
 - Decriminalization
 - ability to treat the issue more as a behavioral health issue than a crime
 - connection to community (community)
 - Keeps the individual in the community (community)
 - depending on situation looking at the harm from a holistic perspective and meeting need of who was harmed or lost something (Resources)
 - Access to more resources & opportunities (Resources)
 - hear from folks what their needs are and try to support meeting those needs (resources/autonomy pro)
 - Compliance based services instead of harm reduction

7) What are the negative impacts if someone over the age of 24 becomes involved in the justice system?

- Access to Basic Necessities & Quality of Life (Employment (9); Loss of Housing (8);
 - Criminal History = Economic Barrier
 - impact on criminal history and not being able to get a job
 - Homelessness, Loss of employment, Family separation.
 - loss of housing, employment, family strain
 - housing and employment
 - harder to get housing and employment
 - Housing impacts
 - if incarcerated due to 'involvement' can lose employment, housing, etc.
 - stigmatism of having to report on job, housing application criminal history
 - Travel-- may be limited in mobility
 - License may be affected
 - having to go to court (missing, school, work, or just regular life things)
 - [loss of ability to access certain government benefits](#)
- Incarceration
 - Length of Time to undo Criminal History
 - some misdemeanor convictions can lead to future felony liability-- for example, DUI, vehicle prowl, DV
 - Probation can lead to jail or prison if there are minor violations
 - The charge follows you into future legal situations/cases
 - harsher sentences
 - incarceration, surveillance/probation
 - surveillance/lack of freedom
 - excessive use of criminal legal system normalizes its use and society's reliance
 - criminal history
 - More likely to remain in the system.
 - Mistake is made regarding paperwork that can take time and years to resolve.
 - Lack of sufficient assessments.
 - [Diminished "humanity" seen by the system](#)
- Family impacts
 - burden on the family of the person
 - Family Separation/Strain (x4) ([1 from 2nd focus group](#))
 - jail time, away from kids and family
 - damaged relationships

- Mental & Emotional Health impacts
 - extreme stress and impact on mental health
 - psychological impacts of being seen as and treated as a criminal
 - depression and hopelessness
 - Mental Health and Behavioral concerns
 - erosion of personal identity, sense of self, capital to survive, and get needs met
- Community
 - The destruction of the human dignity of entire communities, the elimination of any resilience and fortitude these groups have, racial groups, adult BIPOC, people with disabilities, etc.
 - The erosion of the fabric of the community
 - Breakdown of community
- Direct financial impacts (expenses accrued through going through the system)
 - Legal Financial Obligations
 - fees and fines
 - Charges/expenses (financial responsibility to the family) - visits, bonds/bail, commissary,
 - Losing employment or employment opportunities

8) Are there ways to minimize the negative impacts once someone becomes Justice involved?

- Family involvement/support
 - Involve family and community supports.
- System approach
 - No probation, no incarceration
 - Recant the case for dismissal
 - ensure that no criminal record or jail time
 - create ways for people to avoid the system all together ensure that no fines/fees including restitution ordered if they become convicted due to being 'justice involved'
 - allow all cases that aren't diverted to be eligible (understanding that diversion must be robust) for community court
 - stop charging for being on house arrest or sram-- it is very harmful and not done in other places (e.g. king county juvenile court)
 - get rid of the "game" aspect of the system (for example, prosecutors wanting to have wins/convictions)
 - pathways out of the system even once already in
 - Support programs to vacate charges and amnesty events regarding court debt
 - divestment from system. investment in community supports and meeting people's basic needs
 - dismissal of charges (no convictions)
 - Do not give up. Offer opportunities for diversion to those who have criminal history
 - Get them services and out of the system quickly
 - Invest in resources so the resources can focus on providing a continuum of services - move community resources out of scarcity mentalities
 - Prevention
 - The system needs to get out of the way as much as possible
 - Automatic vacate records
 - Dismiss charges automatically without having to "do anything" in return since there is an acknowledgment that the system is harmful and racist
- Resources/Support
 - reentry programming that's tailored to address needs

- Access to resources and support
- Support while people are incarcerated...completely getting rid of jails
- support navigating the system (it's complicated and dehumanizing)
- Be attentive to an individual's needs and/or struggle
- Establishing long term (professionally trained) mentoring or coaching resources
- Offer help with no strings attached
- Refer to community groups that offer assistance/resources
- Criminal history being a barrier to resources-no acknowledgement that individuals have been victims too
- Fees
 - Debt deferred
 - Reduce or eliminate fines/fees

9) How can a diversion program benefit the BIPOC community?

- Healing
 - it acknowledges generational harm from the legal system on BIPOC communities
 - Assist in the root causes and HEALING
 - try to stop the harm of the criminal legal system including conviction, incarceration, and debt
 - Support
 - ensure that no crime is charged once connection is made and provide supports and connections
 - provide supports where that would helpful; engage in restorative practices
 - Can help by not having fines and fees putting someone in an even more difficult situation
 - Reduce disproportionality in the system
 - using a social equity lens that includes individuals from the BIPOC community providing oversight
 - Problematic framing: Justice would= restoring what has been taken from those individuals from community
 - It could benefit the community by going away, reducing the grasp that it has over community members
 - How does a small band-aid help a giant wound?
 - hear from folks what their needs are and try to support meeting those needs
 - opportunity to be seen for your possibility not as a problem
 - Keeps the individual in the community
 - No criminal history for a minor crime
 - connection to community

10) How can a diversion program hurt the BIPOC Community?

- Cultural relevancy
- Not being culturally relevant
- Lack of resources that are culturally relevant
- Favoring 1-2 existing programs. Putting too many financial resources into 2-3 programs. Allow a few more programs to excel and support our community
- Not doing the environmental research to see what is needed and not addressing gaps
- Not hearing from those impacted
- Creating a one program fits all people approach
- Not adequately resourcing so that the program has to close or struggle.
- time commitments that are too rigid or unattainable - don't set people up for success
- Inequity regarding access

- no criminal history bars will be key to ensuring that the program isn't harmful given over policing and racist systems
- ensure that victim compensation is not a barrier to diversion; ensure that government pays for victim compensation
- if the program is set up in a way that excluded BIPOC individuals
- Insufficient Data Collection
 - outreach must really effective at contacting people (esp. if the charges could be filed if the person doesn't engage with or complete the diversion)
- Keeping offenses criminal and saying they're just going to divert, it keeps the offenses criminal
- If you take all the crimes of how poverty is criminalized and decriminalized, take all the poverty crimes off the table and divert things that are more serious
- This question is problematic in framing. The premise is that the set-up of the system is righteous or fair
- If you believe this diversion is a solution to the problem. These "crumbs" that are offered are pseudo incremental reforms that aren't making actual substantial changes to the circumstances of people of communities
- Let all the pettier things go completely to free up resources to invest in the more serious offenses
- Start with the greater, more serious offenses
- If there isn't trust or a connection between the people participating and those running the program. No chance for vulnerability and understand of the "Why"

Systems Roles:

11) What elements/specifics of the "system" do you believe is racist or unfair?

- The whole thing (x10)
- the entire system is racist and harmful and relies on toxic capitalism and oppression
- racial disproportionality at Every Point of Contact, every stage of the system (policing, prosecution, court process, sentencing, incarceration) (6)
- Need to divest
- It's DNA. It's foundation. This is why it needs to work on going away. Making itself smaller, not keeping itself in place. Not coming up with diversion, it needs to divest
- labeling someone and giving them a criminal conviction is extremely harmful to the individual and our community
- locking people in jail cells harms them including their mental health, leads to them losing housing and many other documented harms
- Putting people in cages
- Lack of information
- Lack of Representation of BIPOC Staff @ all Levels
- Lack of equal case review and fair legal practices.
- Lack of cultural competency
- The violent offender myth
- Blind trust in the police report
- Overuse of guilty plea deals
- "Colorblindness" being acceptable in the system

12) What changes do you believe are necessary to "Change" the system?

- Allow more COMMUNITY support and advocacy.
- More black representation (lawyers)
- Hiring More People Who come From and Understand our Communities

- the system cannot be reformed. it must be dismantled and allow for a community response
- everything I wrote on the other side (group 2, q 11)
- i believe the system needs to be completely dismantled and we need new systems of care (prevention) and responses to harm (intervention) in place of them
- making prosecution and incarceration obsolete
- Culture shift. Commitment to end mass incarceration
- More resources towards reform and defense
- More support and resources for alternatives to traditional prosecution/courts
- Buy in from all departments involved in the legal system
- if system remains, critical to stop incarcerating/surveilling people and to provide low barrier pathway's for dismissal for all case types and situations
- Peer to Peer Interaction by employing those with the lived experience.
- Cultural change within the system—from police departments to prosecutors to courts
- Take it out of the government and put it in community
- De-politicize it
- Take out profit motive of incarceration. Un-privatize services
- Change the narrative that its beneficial to someone (victims or 'offenders')
- Make itself smaller/disappear
- Divest
- More training for the people who are responsible to make arrest/charging/sentencing decisions
- Need to look at a multitude of factors when determining if a charge can/should be charged besides what is in four corners of a police report
- We need to see the HUMANITY in all people
- The bureaucracy is a part of the issue
- Making sure there are no loopholes around which crimes are eligible for diversion so that officers can charge people and exclude them from diversion

13) What do you mean when you say the system is unfair?

- Institutional racism
 - Racially disproportionate
 - Racist practices and policies
 - Not enough consideration or education on culture
 - Unfair sentencing/practices impacting black people
 - Continued way to control, surveil, and dehumanize black people
 - African American's and People of color are given harsher sentences than other races.
 - It is dehumanizing
 - The color of skin is predictive factor in outcomes
 - Every Point of System Contact Produces Racial Disparity
 - people who are wealthy or have resources are able to avoid pretrial incarceration while those who don't are incarcerated pre-trial
 - Police union too strong and holds up racism & bias
 - the system targets BIPOC individuals and those experiencing poverty and behavioral health struggles while allowing doing nothing to help them or our community
- Lack of services/resources
 - The system gives little services. Services are not enough to sustain change
 - Not enough resources toward defense
- A lot of talk, but not a lot of action
- Little police accountability

- Doesn't do anything to repair harm simply exacerbates it
- It's design to eliminate and/or control a certain group of people from society
- My Experience Working in "the system" is that Leadership is Disconnected from Community.
- System Lens is Generally Punitive vs Transformative
- People are forced to go to many lengthy hearings, incarcerated, livelihoods disrupted in the voice of "public safety"
- Institution values convictions as "wins"
- Us vs them mentality of the system

14) What do you believe are the obstacles/barriers to creating change in systems?

- Institutional Racism
 - Institutional racism. People don't want things to change (3)
 - There is a benefit to keeping the system in place (2)
 - there are a number of powerful entities that want the current system to continue
 - power structures are set up to punish and label BIPOC individuals and communities
 - White people in power/people in power wanting to stay in power
 - [Internalized racism](#)
- there are a number of entities and 'media organizations' that say that "seattle is dying" and that the system should be more punitive (seattle was the fastest growing city last year)
- Finances, Housing instability and Lack of Information.
- Ineffective leadership
- Groupthink
- Outdated policy
- Lack of cultural competency
- Ego (2) ([1 from 2nd focus group](#))
- Operating out of a position vs. people perspective
- Fear of losing jobs/position
- Politics
- Apathy
- Other systems also failing our people
- Working out finding or allocation of resources
- Fear of victimization even if not fact-based
- Career paths are needed for black people. Attorneys to represent folks with equal pay
- [Willful ignorance](#)
- [Whiteness](#)
- [Persistence in using BIPOC's pain to elevate political careers/upward mobility of bureaucrats and centering themselves \(system, politicians\) \(2\)](#)
- [Individuals not feeling comfortable to acknowledge privilege or their own bias](#)
- [Insistence on centering itself \(politicians, systems\)](#)

15) How should the City respond or not respond to retail theft and criminal trespass from a commercial establishment?

- System response
 - no charges filed regardless of whether person engages with any voluntary
 - Give warning
 - offer of services/diversion
 - Treat it like a survival crime
 - If merchandise is recovered, there should not be a criminal response
 - Organized retail theft is different
 - Recognize the victims of most trespass/theft are corporations, not people

- The city should train police to have equitable discretion
- decriminalize poverty and homelessness
- what's the goal of filing the charge?? can we meet those goals other way?
- City should not respond to merchant, theft, bring it to the community
- They shouldn't (2)
- Look into why and not the what
- This is a community question (it should be responded to in community by community)
- Diversion
 - Offer diversion, but do not file charges if do not complete use prosecutorial discretion to not file retail theft and criminal trespass
 - if you offer diversion and they don't go, don't file the charge. many people don't complete diversion because they can't be found (experiencing homelessness, etc.)
- Provide resources
 - Provide resources to these people
 - Provide resources to basic and essential needs after finding the reasons behind the behavior.
 - The reframe for the City: What is the City's responsibility to folks who don't have their basic needs met?
- provide the resource that is being taken
 - there should be no system or diversion response and, instead, people should be provided resources that aren't linked to a 'diversion' or charge
- possibility for community restitution

16) If you do believe that there should be a response, what should that response be?

- Any response should allow the individual to build community
 - Allow the community to take care of itself--churches and mosques. Think traditional and non-traditionally
 - Finding out reason to WHY the behavior (if any) exists
- Any response should be voluntary and should focus on the person's needs from that person's perspective
- (see prior page-group 2)
- To find out the reason that the person is behaving the way they are. What needs are they trying to meet with their behavior?
- Reframe to: What is the City's responsibility to folks who don't have their basic needs met? The city's default response if any, shouldn't be toward the individual, instead the city should look at the conditions that lead to the individual making certain choices. Inflation is increasing, and wages aren't for example.
- Expand funding for community organizations that are already doing the work of meeting basic needs
- Use informed community experts that have an analysis regarding race and regarding the outcomes of the legal system ALONG with what the research says local and national, and use that to inform your direction
- Reimagine what the funding process/stream looks like
- Figure out what funding distribution should look like and then advocate for that, use your power to change that system (funding distribution), specifically only choosing 501c3s

17) Should a person be subjected to criminal charges?

- No! (4) (2 from 2nd focus group)
- No. You already know that criminalizing people doesn't help, it is harmful. A punitive system doesn't solve the problems it says it was going to solve: doesn't make communities safer, doesn't dissuade, doesn't change behavior, etc.

- Only if the crime causes substantial physical harm
- Diversion should NOT=Criminal Charges
- It depends on the crime and the person's situation.
- Should prosecutors that engage in misconduct face criminal charges?

18) What role should the City have when one person is alleged to have committed violence (assault) against another person? [it will be important to note that we are talking about misdemeanor assault which would be no substantial injury.] If you believe the city should intervene, should the intervention be criminal charges or community diversion? What does that look like?

- Community diversion would be best when determining one's ability to provide FULL participation in the program.
- Groups and workshops to identify the problem and a solution.
- if there is a response, it should be restorative and supportive
- I believe that an environmental assessment could be beneficial when done by culturally relevant community providers who can support root causes of the action as a charge free diversion
- as part of any diversion, may want to explore restorative response especially when the person committing harm and the harmed party know each other
- i think no response is optimal (other than an offer of supports, including a restorative process, for the person causing harm and the person harmed)
- Need resources and people need to engage in them.
- It should be restorative and restorative inherently means it is not responded to in any way by the system that sets people up against one another
- people who caused harm and person harmed should be at the table for resolution. Address why action happened. The city does not have a role
- Assaultive behavior should be addressed esp. intimate partner violence. It is devastating to the whole family.
- The system needs to examine how it enacts violence in the community.
- Assaultive behavior should be addressed esp. intimate partner violence. It is devastating to the whole family.
- The question isn't whether assaultive behavior should be addressed or not. The question is what is the role of the City's punishment system.
- instead of restorative, it is transformative
- See "violent offender myth"
- When prosecutors talk about violence being committed in the community, you're co-signing that the city/state has a monopoly on deciding who is violent and what the city needs to respond to. The community doesn't have the power to decide/charge how prosecutors and the police enact violence into the community.
- community diversion - restorative justice model. People sitting face to face
- It shouldn't have a role, aside from getting out of the way
- People who allegedly commit violent crimes are no different than people who allegedly commit non-violent crimes. The reality is that the distinction is made by police and prosecutors as they use their bias and discretion, which we already know is racist and problematic. It feeds, perpetuates fear.

Program Design

19) What services would be necessary to support people age 25 and over as part of a diversion program?

- Foundational services

- case management, housing support, help with behavioral health struggles, medication assisted tx options, education/job training
- Substance abuse referrals
- mental health support
- Licensing help
- Employment support
- Housing help references + invest money into housing (2)
- Assist getting identification documents
- behavioral health specialists
- assessment and linkage to care long term & case management
- Educational Training--teaching them about the systems that they are navigating. Giving them tools to support them with navigating the world
- Healing circle/ therapy programs
- Racial healing
- Addiction services on demand
- Meeting basic needs: housing, health
- Career training. Skills necessary to obtain liveable wage employment Housing
- Expand funding for culturally responsive and trauma informed services
- Resource the community to do what it does
- Financial resources
- Mentorship
 - life coaching support- focused on a blend of a true model of life coaching and life skills supports
 - Peer based interventions
 - Behavior modification and peer to peer support
 - When people have no hope, they may have no dreams. Help people imagine and realize their dreams.
 - providing people with supports. To assist them with navigating dreams
- Immediate response if possible; currently cases are often being charged when the offense happened 12 to 18 to 24 months ago
- Acknowledge developmental delays that occur without opportunity
- Align success with the experience of people who are going through the system and adjust it for their needs
- Community Diversion
- Community Service Social Justice Projects
 - Community based projects that create bonding to the community
 - Community service but not just picking up garbage. Meaningful service.
- No more programs/ Not program contractors
- not programs, but a process. What relationships can be built. Address the issues that are happening in the person's life
- get down to root problems
- Tools to eradicate the system

20) How can the diversion program benefit the FAMILIES of people that are justice involved?

- Family
 - Family reunification and some form of family intervention
 - Utilize the family support system.
 - Help reconnect participants to estranged families
 - Access to FAMILY therapy
 - Supporting the needs of family in relations to the charges

- If family is involved in the diversion process, it provides a natural support system
- Families will benefit when participants are supported with new resources and participants growth
- Resources
 - Provide housing support; provide opportunities to build community
 - it is important to compensate individuals for their time, including transportation and meals
 - The whole family benefits from the additional resources
 - Resources to support the family needs
 - Assessment and linkage to care
- Creates less of a record for an individual in the community
- If the diversion process includes an element to have system players examine ways humanity is lost by reducing people to actions and behaviors.
- It benefits the community by building up the members of the community so that we have more rolemodels and leaders
- This question is posed with the premise that the diversion is warranted/sensical/wanted/helpful/necessary
- eliminate the stigma of a criminal record and the barriers that currently go with that

21) What/How can this benefit the community?

- A supported community is a safe community
- Community based projects helps bond people to the community they live in
- Makes the community feel supported
- Diversions should be community based and build community naturally
- Prosecution and jail undermine community safety while providing supportive services promotes community safety
- Reduce recidivism and provide more public safety within communities of color.
- providing an immediate response will help addressing underlying needs
- Increase the PEACE and SAFETY of the communities.
- Mentor/mentee relationships gives benefits both ways
- Establish ways for community to be part of the process so that they become a vibrant part of the healing
- Importance of business community stepping up, too
- Prevents a charge from creating/adding to a record
- It could restore and build community engagement amongst the people
- helps meet basic needs/assess what needs aren't being met
- Helps the harm of court fines, fees
- Creates an alternative moving away court system-- cost to taxpayers
- As the healing process begins for the accused person the community reaps the benefits from the restoration of any citizen. if its a healthier person they'll make better choices.
- The community could benefit if it can be used for more serious offenses and if poverty can be decriminalized and if in the process it humanizes the system actors

22) What are the program elements that would address the root causes of the persons why (i.e. why the offense occurred)

- i think all of the suggestions for responses would address underlying needs
- Therapy/Healing
- Therapeutic community support from people that have the lived experience and who are directly impacted.
- Healing Centered Engagement

- Resources
 - will need to find a way to help people meet their needs
 - Harm reduction Case management , financial support to community agencies to deliver the support needed. and linkage to care there are so many contributing factors to a persons action/reaction; (mental health, financial, stress ,housing fidelity, food fidelity. environmental. substance use.)
 - Assistance to get resources-- like Social Security benefits, food benefits
 - provide immediate response
 - provide housing support. assist with behavioral health struggles, medication assisted treatment (3)
 - Baselines for SUD (substance use disorder)
 - Provide tools to help someone overcome barriers
 - Behavioral health specialists, if there is counseling aspect
 - counselors or social workers that are equipped to determine underlying issues leading to an offense
 - Help with getting identification-- if no photo ID it is hard to apply for employment, housing, etc.
 - Employment opportunities element connected/partnered with the model.
 - Substantial changes to a person's condition. House people who are homeless for example.
 - Accessible inpatient and outpatient mental health, behavioral, trauma, and addiction services that are culturally/racially/linguistically responsive
 - Adequate funding for programs and services
 - Offer actual housing
- Identity Development/support/coaching
 - Programs that develop culture and who they are-- identity development
 - IDENTITY DEVELOPMENT. When folks do not have culture, they don't have identity. There need to be roots to stabilize. How do help people understand who they are despite their circumstances
 - a true life coaching/life skills component that supports the mindset and skills development of the individual. Not mentoring, plain coaching, or plain life skills.
 - cultural/ linguistic matches in mentor/mentee relationship
 - Need to understand the systems that you're navigating and how to overcome regardless of circumstances
 - Stop treating person like a problem, but rather a possibility
 - Accomplishment ceremony - this would give a sense of accomplishment for those who don't feel like they matter
- Addressing institutional racism
 - Addressing racism, lack of resources inequity, poverty, people raised around abuse
 - Most clients are involved in multiple systems
 - can the different systems communicate and support the individual
 - Acknowledgment ceremony perhaps for harm the person charged has endured
- Accessibility
 - go to person rather than having them come to a certain place at a certain time; provide transportation for anything
 - Competitive wages for the staff - Fund the program appropriately. Program may currently not have the capacity to really follow participants through the program.
 - Programs where staff receive solid development opportunities that encourage them to truly live not just teach the life.
 - Poverty
 - Expand funding for community orgs already doing the work

- Adequate funding for programs and services

23) How would you determine who is eligible for the program? What charges? Keeping equity in mind.

- no charges should be excluded; if any charge is excluded, need to look at the data regarding who is charged with the offense to assess the impact of any exclusion
- It should be based on FACTS not accusations.
- don't exclude anyone due to victim compensation
- don't exclude anyone due to criminal history
- Not only first-time offender
- Using data to determine eligibility
- identifying the most visible group based on data
- Both thief and assault misdemeanors should be eligible for the program
- Anyone, or maybe if there is convictions that would bar participation maybe have a time limit of past conviction
- it would be ideal if everyone went through an initial screening process where the requirements for diversion were decided by community before hand and the criterion is established
- most charges if no substantial harm is caused to a victim/the offense is non-violent
- The parameters should be as broad as possible and should focus on the most "serious" cases and on the most impacted populations
- Everyone going through the system should be eligible
- Any process should be person centered

24) If done well, what outcomes would occur/

- divesting from the legal system (and the jail) and investing in people and community
- meeting needs and not causing additional harm
- Reduction in the JAILS and Prisons.
- Housing and Employment Sustainability
- Job and Housing Retention
- help people in their relationships though a restorative justice focus
- not labeling people and harming with criminal history
- Decrease in Substance Use
- with a prescriptive approach to serve, individuals should be able to navigate with success
- Reduce Black, Indigenous persons in the system
- Individuals gaining self-autonomy
- Provide individuals with support systems
- Education, employment, centered in family structure, strong sense of identity, gain significant role in community, understand value of sharing their story
- personal improvement plan
- become a person who can share their testimonial
- reunification or reconciliation in family unit
- the community will all benefits from the restoration of any citizen
- the number of people facing criminal charges/in the system would go down
- Recidivism rates and/or filings would decrease
- The victim would get some relief
- The person in the program would feel more whole and able to contribute to society productively
- There would be cost savings in the long run

- The system would shift money into the community. It's budget would become smaller, employment of attorneys would reduce, less judges, less everything.
- The outcomes would be based on the changes that happen in the system, not on the people the system exploits
- keep people out of the system. Allow them to become empowered

25) If you had to choose, would you rather see more people go through a less intense program OR less people receive more intensive long-term services and support?

- more people go through less intensive program (6)
 - with a referral for people to get additional support. at a minimum, we need to stop harming people through the criminal legal system
 - More people go through a less intense program (Case by Case basis)
 - Short intensive intervention which leads to a body of choices which leads to a better outcome
 - as many people as can be served without resources being stretched thin and the opportunities are actually beneficial
 - Provide quality programming to as many people as we can
- More intensive. Less people. (2)
 - Sustainable change takes time. Past models that serve the masses for pennies a person doesn't work.
 - it would be most beneficial if we did a thorough job of care with a few than inadequate services for many. The life change brings hope and is contagious. Each one teach method
- assessment and self-selection to decide how to serve the individual
- Connect to resources in the community (community--natural partners)
- Have to offer choices
- Based on the criminal history and offenses this should establish the criteria for less or intensive long term devices
- Scaled to offense-- theft or assault could have different look
- Neither
 - This framing puts us in a place of deciding who is more deserving. Nobody should be in that position. People deserve more than the bare minimum. They should receive it all.
 - have to understand, when you look at a dichotomy between less/more, you cheat yourself out of the real experience. It has to be situational based on what that person needs. It has to be based in relationship so you know what people need
 - Establish a process, not a program
 - Neither are helpful or supportive of the community. Neither is equitable
 - This framing is presented to the benefit and advantage of the system through a White supremacist frame of a scarcity mentality
 - People should have the support they need. Any process or program that doesn't do this is not helpful.

26) What are your suggestions for the implementation of the program to determine effectiveness that can be used to spread the work? (starting small to grow)

- i don't think the program should start small to grow. rather, i think it should work to provide response while limiting the harm of the system immediately
- Capture data when it is implemented. (4)
 - Who was served and outcomes. Quantitative and Qualitative including feedback from participants.
 - Maintaining accurate data based on equity
 - Ask for anecdotal feedback from participants to supplement data

- Have more peer support and mentorship from people who have the lived experience.
- Create an awareness to understand the benefit
- When success occurs, celebrate publicly
- How do you inform the community?
- Can it be decentralized into individual communities?
- Community investment
- Adequately fund from the beginning
- Strong care from community partner
- Piloting the program is effective and informs the areas for improvement and scaling up
- And if there is cost savings reinvest to expand
- Start with the most intense needs, intervene with people who are Black and from most impacted demographic communities
- Start with the most intense needs, intervene with people who are Black and from most impacted demographic communities
- slow process to itemize and prioritize individual needs. Serves person to person
- Person in the program chooses what services they need and from whom
- the more centered it is in the community and not in the system, the more effective will it be

27) How can this diversion program meet the needs of harmed parties? Including their material needs?

- I think there should be a victim compensation fund that the city funds in order to provide support for harmed parties as putting people in debt is very harmful
- Victim compensation fund by government
- Have a fund where restitution actually gets paid
- there should be a financial obligation/remedy to the victim
- Have resources available to refer victim to, like non-profit victims service agencies
- Have an option of a victim's statement that is received from victim to be given/read to person who caused the harm
- Have an option where suspect writes apology to victim
- Provide the necessary support "Financially" for any services needed to help with healing and restoration.
- Large corporations with the ability to have loss prevention and insurance should not be considered a harmed party for purposes of this discussion
- RESTORATIVE JUSTICE
- Ability to be seen as caregiver not a criminal
- Some option of mediation, or circle

28) Are there any other ideas, comments, information, you would like to share to inform the development of this toolkit & Design of the diversion program?

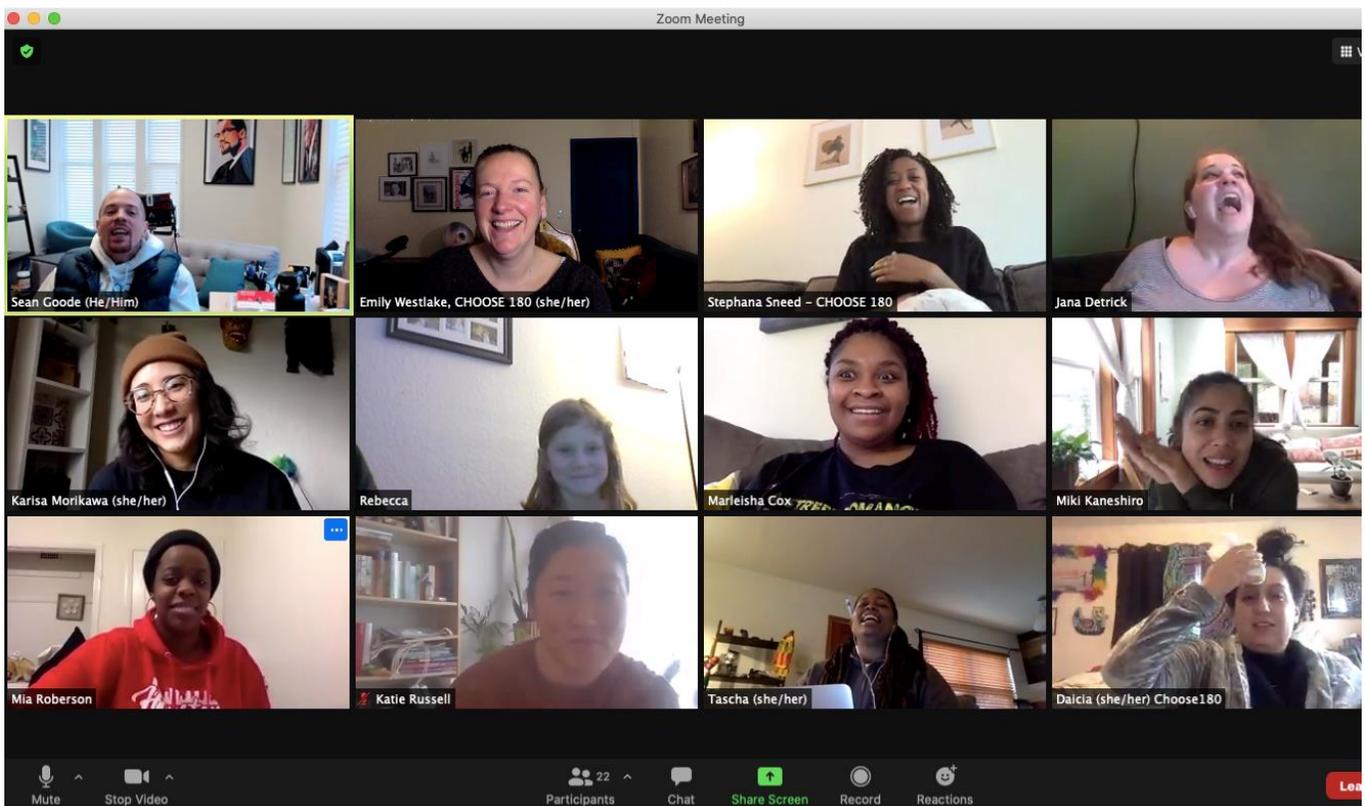
- Set up a response that can allow for people to have an immediate response
- Important that we act with urgency given the harms of the system
- Important that impose restrictions on who can be "booked" into custody so that folks eligible for diversion are not arrested and booked into jail
- structure the response around a divestment of funds from the legal system and investment in community response
- Allow People to make amends by becoming community involved.
- throughout this discussion, needs to be recognition that the current system is harmful and that doing nothing is better than what is currently happening

- Don't tokenize community members. There are community members that don't have an informed analysis that offer harmful/uninformed feedback, but are involved only based on the virtue of their identity (skin color, job, etc) (2)
- This isn't fundamentally shifting power dynamics. At the end of the day, the prosecutor still holds the decision about how this program is going to be developed and executed. (2)

Community Report

Mainstream Pre-Filing Diversion Program for Young Adults

CHOOSE 180 in partnership with the Seattle City Attorney's Office
and the Community Resource Center



Pictured : CHOOSE 180 staff in a virtual meeting during the pandemic.

Statistics compiled by the Seattle City Attorney's Office. Please address inquiries to:

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Overview

The Seattle City Attorney's Office in partnership with a community non-profit organization, CHOOSE 180, began offering a Pre-Filing Diversion opportunity for 18-24-year-olds beginning in September of 2017. Pre-Filing Diversion offers young people the opportunity to participate in a 4-hour CHOOSE 180 Young Adult Workshop instead of being processed through the traditional criminal legal system. Those participants who complete the Workshop will not have criminal charges filed. This restorative practice approach aims to steer young people down a path of personal responsibility and redemption rather than into criminal charges with lifelong collateral consequences. The Workshop creates the space for participants to hear from people with shared backgrounds and experiences and encourages participants to identify the behaviors that have led them to their current circumstances, what has kept them from making positive change, and envision the path to make change. Throughout the Workshop participants are encouraged to identify what support they need to forge a new path, and during and after the Workshop participants receive continued support from CHOOSE 180 and a Resource Specialist from the Community Resource Center in Seattle Municipal Court.

Given the unprecedented year we have had with a global pandemic, CHOOSE 180 pivoted in March of 2020 to a virtual Workshop format. The Young Adult Workshop is still four hours in length, but now a CHOOSE 180 staff member works one-on-one virtually with each participant over the course of a week. CHOOSE 180 provides laptops, hotspot internet access and other technical assistance as needed.

CHOOSE 180 continues to honor their value of employing staff reflective of the population they serve. Currently 100% of CHOOSE 180's leadership staff, 88% of staff, and 62% of the board are BIPOC (black, indigenous, and people of color). All staff and board members were formerly involved in the legal system, have had relatives or family members that were involved in the legal system, or work with the legal system.

Since program inception in late 2017 through December 2020, CHOOSE 180 hosted nineteen in-person young adult diversion Workshops and ten months of virtual one-on-one Workshops. The City Attorney's Office has referred 1,051 young adults on 1,216 reports to diversion. Of the 1,051 young people invited to participate in diversion, 447 young people completed the program, and 481 reports were diverted.

2020 Mainstream PFD Program

In 2020, the City Attorney's Office diverted 104 fileable cases involving 95 young adult participants across two in-person Workshops (Jan, Feb) and ten months of virtual one-on-one Workshops. Nine of the participants were diverted on more than one criminal case. Although 95 young adult participants completed diversion, we referred 210 young people on 245 reports. We are continually strategizing with CHOOSE 180 on program participation rates. As you can see below on page 7, almost a quarter of the people who complete the program reported having unstable housing. We anticipate that percentage to be much higher for the young people that never make the Workshop.

No one could have predicted the global events of 2020 and the far-reaching impact they would have on everyone's lives. Given the cessation of in-person gatherings, including all court hearings, CHOOSE 180 pivoted to a virtual Workshop model in March of 2020. They were able to do this within weeks of the lockdown, and there was no lapse in service for young adults. Rather than having their case delayed at the

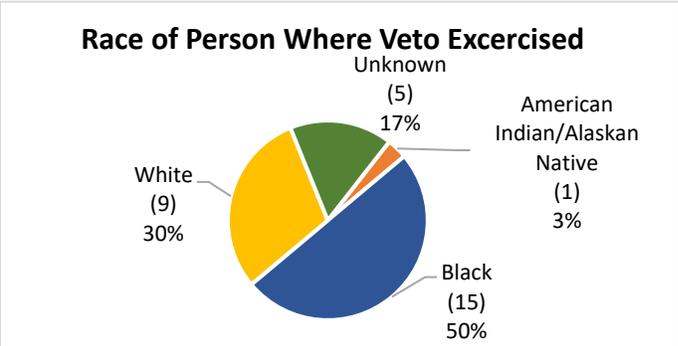
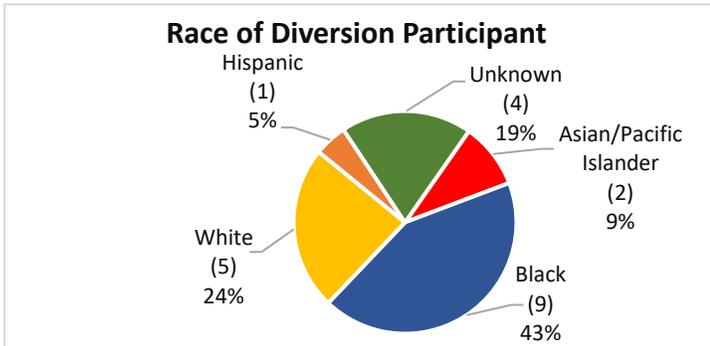
Court due to closures, young adults were able to immediately participate in workshops and be connected with resources.

In May of 2019, in coordination with Seattle Municipal Court and King County Department of Public Defense, we began offering a post-file diversion opportunity to address equity concerns given the overwhelming number of young people using shelters as their addresses. Often, a lack of response to a pre-filing diversion letter was solely due to lack of receipt of the letter. A total of 17 young adults on 23 reports utilized this post-file option in 2020 to have their case dismissed.

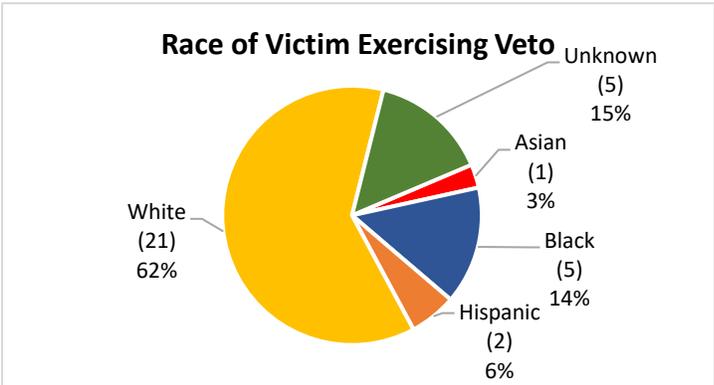
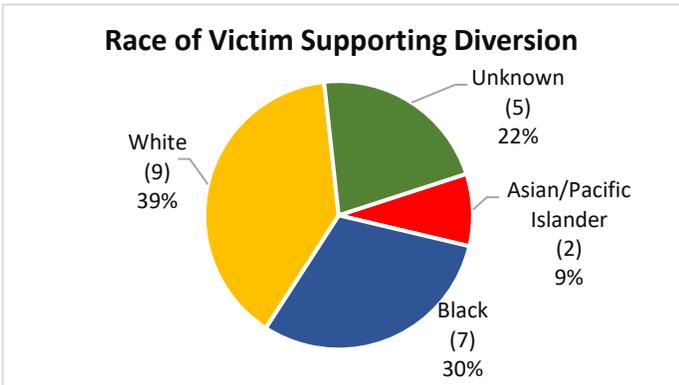
In 2020 we made further adjustments to the program in light of our continued desire to reach communities most marginalized. In part of 2019 and 2020, the Seattle City Attorney’s Office (SCAO) broadened our Pre-Filing Diversion eligibility criteria to include some crimes against persons (typically minor Assaults and Harassments). To provide victims of person-crime incidents an opportunity to have their voice heard in the diversion process and to increase the number of young people who were able to engage in diversion, SCAO attempted to pilot a restorative justice add-on piece to the typical diversion workshop. Young people who had traditionally been ineligible would now be eligible if the victim approved. Unfortunately, the majority of victims did not approve of diversion.

As shown below, persons of color disproportionately accounted for the number of person-crime incidents that were subject to the Person-Crime Victim Veto process.

Person-Crime Incidents in 2019 Subject to Victim Veto in Pre-Filing Diversion Screening



As shown below, there were also differences in the willingness to support diversion based on the race of the victim. The data suggests potential bias in that a disproportionate number of White victims vetoed diversion. Furthermore, none of the victims were willing to take part in a restorative justice response.

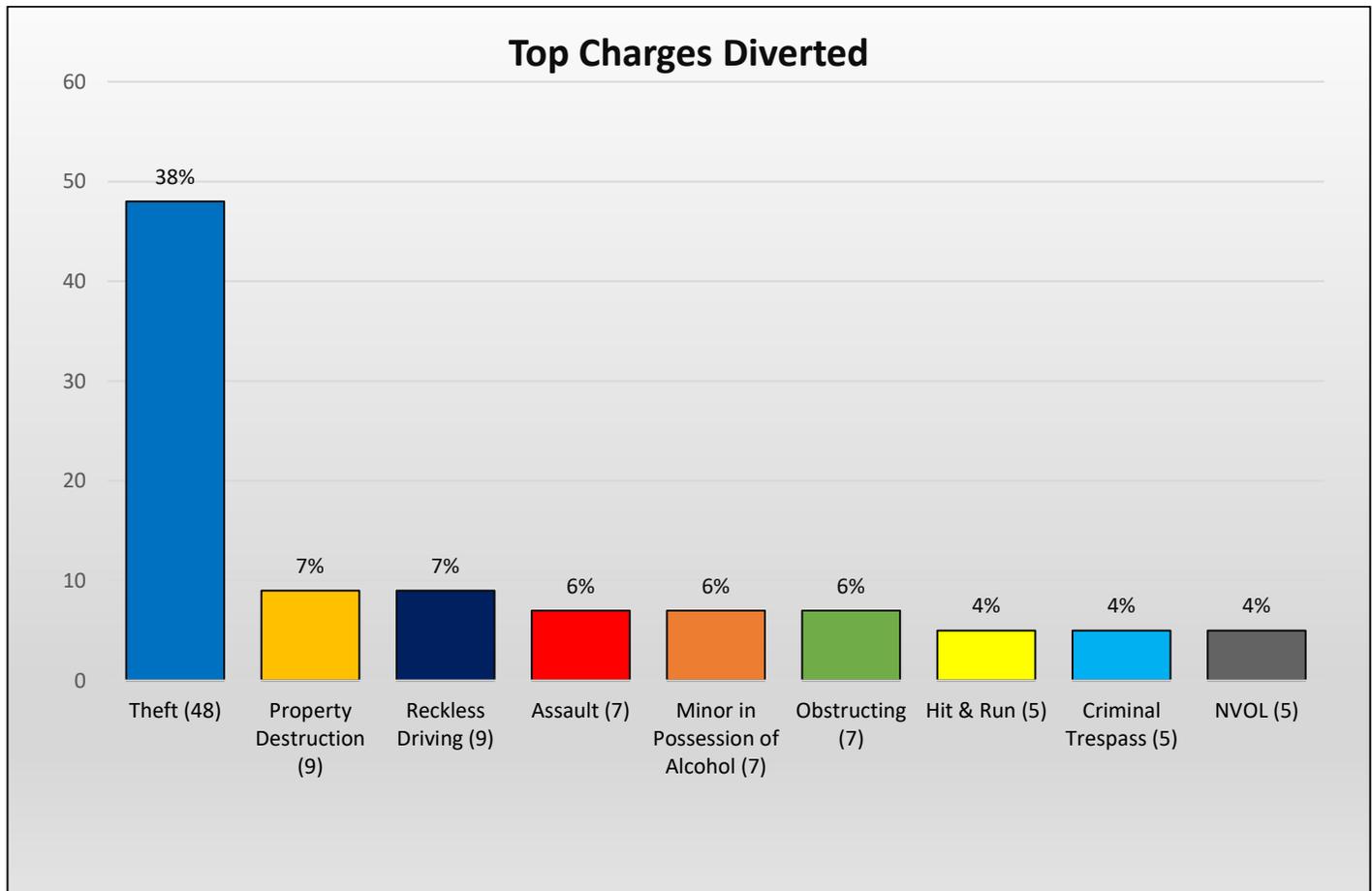


To combat inequity issues identified in the first pilot, SCAO and CHOOSE 180 have agreed to pilot a new CHOOSE 180 Plus for 2021. There is no longer a victim veto; however, as with every case, SCAO will consider any specific safety concerns raised by an alleged victim. Young adults accused of some person-crimes will be referred for a one-on-one Workshop even after CHOOSE 180’s operations return to the in-person workshop format. This individualized attention will allow CHOOSE 180 navigators ample opportunity to work with young adults in a heightened way to address barriers to their success.

As is true with every incident, the SCAO retains eligibility discretion and will consider the facts of the incident, including any alleged injury and any known history of violence and may deem an incident ineligible based on extraordinary circumstances.

Charges Diverted

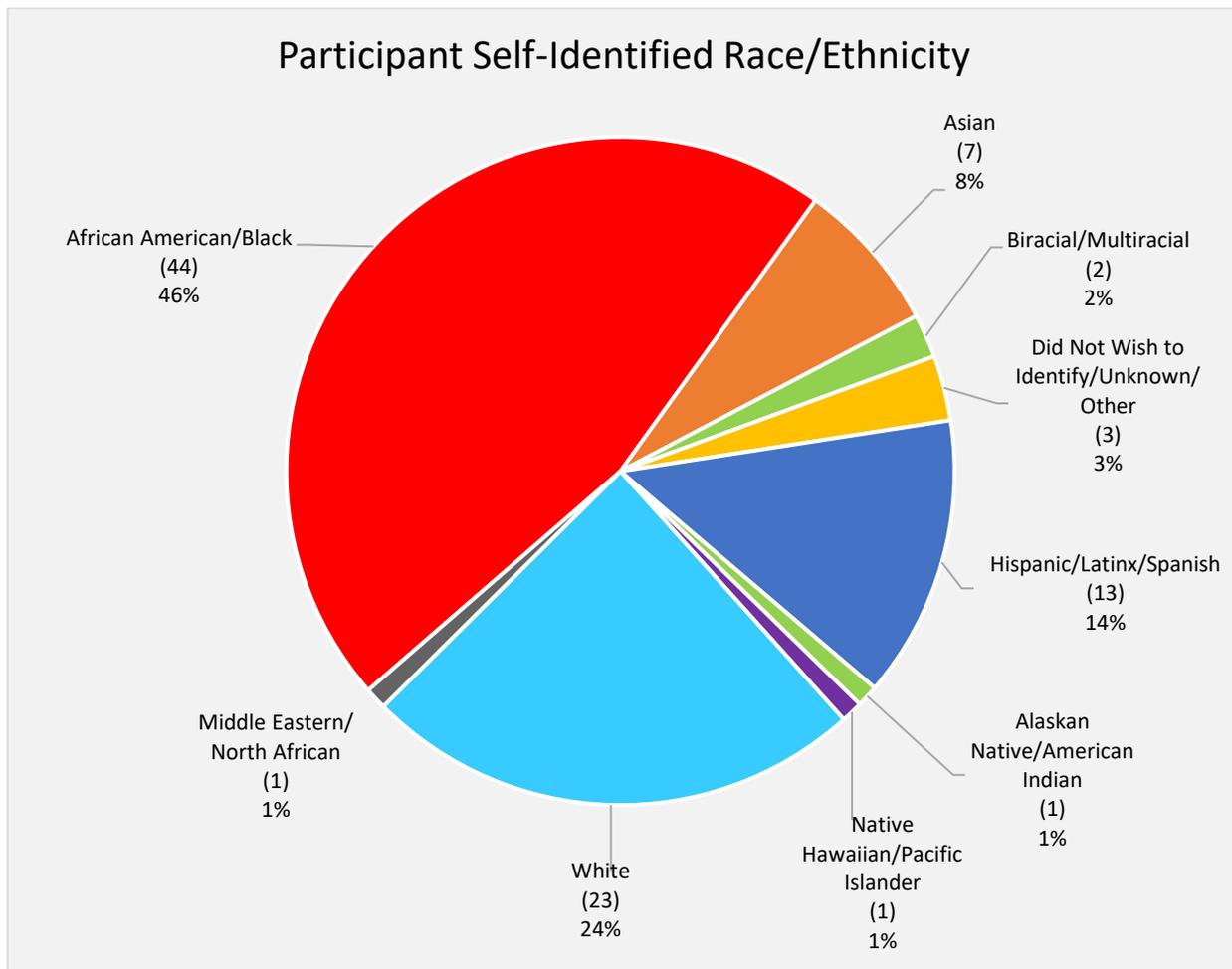
As for the charges diverted, 19 of the 104 incidents would have resulted in more than one charge for a total of 127 charges diverted (four cases had three charges, the rest had two). Theft has always been the top charge diverted in the program, and that remained true in 2020. These statistics reflect that at least one of the diverted charges would have been:



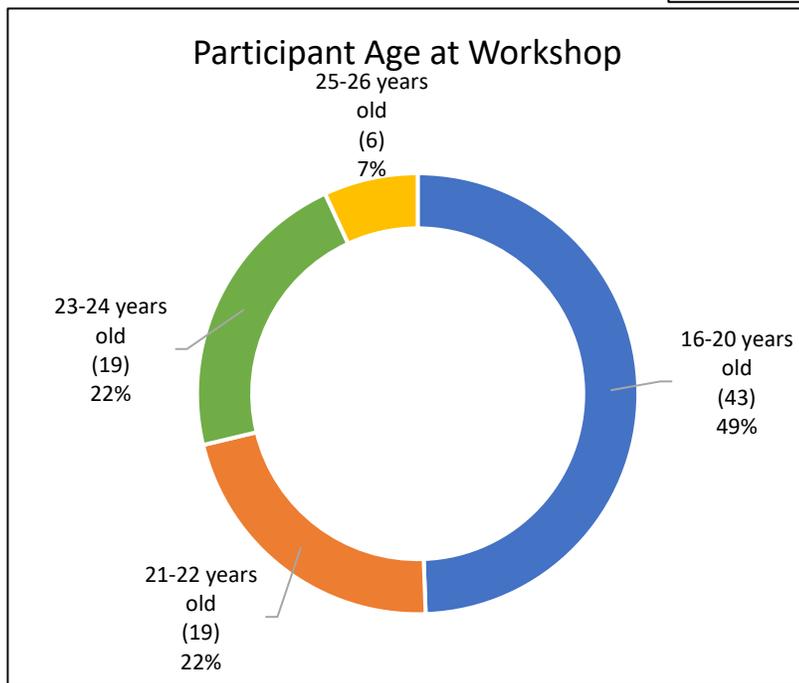
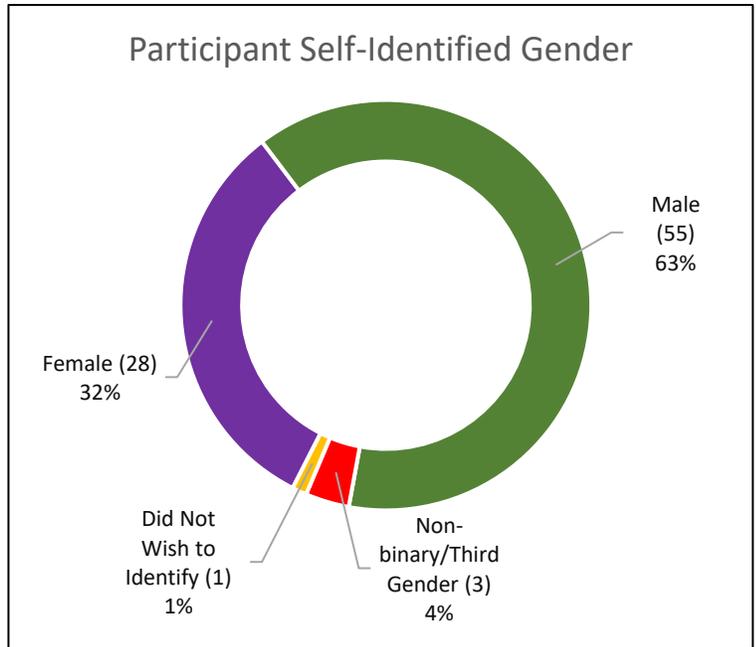
*Percentages do not add up to 100% because 18% were all other charges not depicted in this graphic.

Self-Reported Participant Data

At each Workshop, CHOOSE 180 asks participants to complete a Participant Information Form that helps us better identify who is being served by diversion and what life challenges participants face. As shown in the figure below, *Participant Self-Identified Race*, a diverse group of young adults are utilizing Pre-Filing Diversion. We acknowledge that persons of color are disproportionately represented in diversion, just as they are disproportionately represented in the traditional criminal legal system. Greater diversity in diversion should result in less disproportionality in the traditional system.



As shown in the figure to the right, *Participant Self-Identified Gender*, 63% of the participants identified as male. According to Seattle Municipal Court Data from 2011-2015, 69% of defendants ages 16-24- years-of-age across all case types were male and 31% of defendants were female.¹ The gender gap decreases significantly when looking at the gender breakdown for defendants who enter the Pre-Trial Diversion program at Seattle Municipal Court which in 2015 was 53% male and 47% female.² Thus, we are particularly excited to see that so many young men continue to take advantage of the diversion with CHOOSE 180.



As shown in the figure to the left, *Participant Age at Workshop*, almost half of the participants were age 20 and under.

The City Attorney’s Office has misdemeanor jurisdiction for driving offenses committed by 16 and 17-year-olds and cases where the person has turned 18 by the time of prosecution. The King County Prosecutor’s Office handles the prosecution of all other juvenile offenses. In 2020, 6 participants were 16 or 17 years-old on the date of violation.

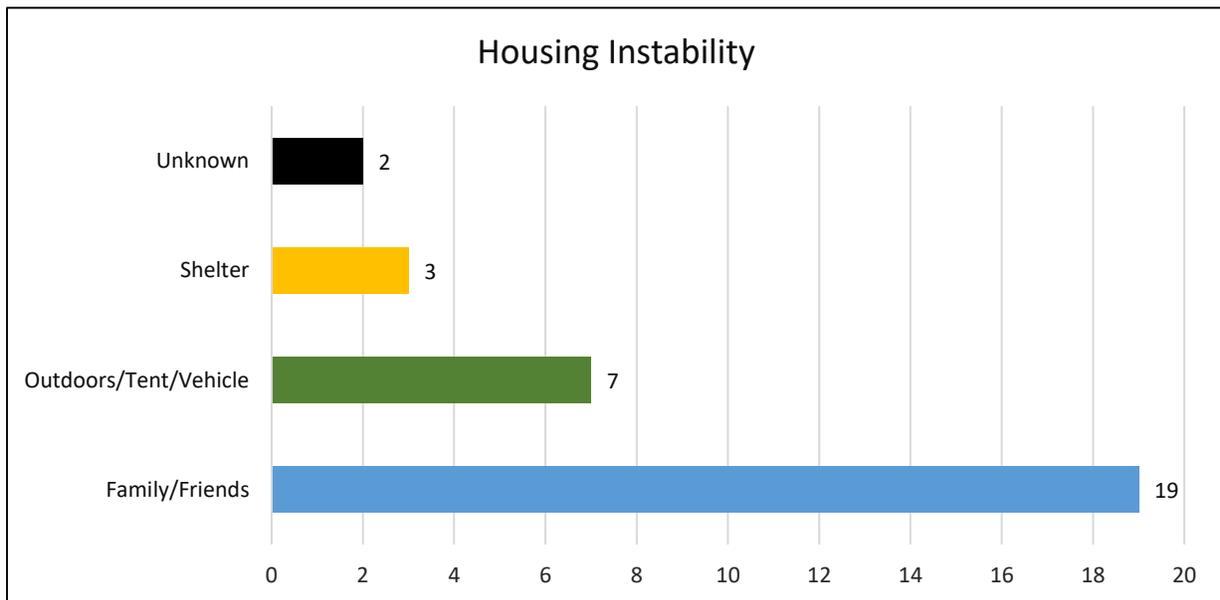
¹ Seattle Municipal Court 16 to 24 Year Old Defendants and Cases at SMC, with Violation Date from 2011 to 2015; Prepared by SMC Research Planning and Evaluation Group Staff; 1.2.18-12.28.17.

² Seattle Municipal Court Pre-trial Diversions between 2011 and 2015 by Incident Date at Seattle Municipal Court; Prepared by SMC Research Planning and Evaluation Group Staff; March 2017. It should be noted that the PTD data was all ages.

As shown in the figure to the right, *Participant Housing Stability in Last 12 Months*, 25% of attendees reported experiencing homelessness or unstable housing in the last 12 months.

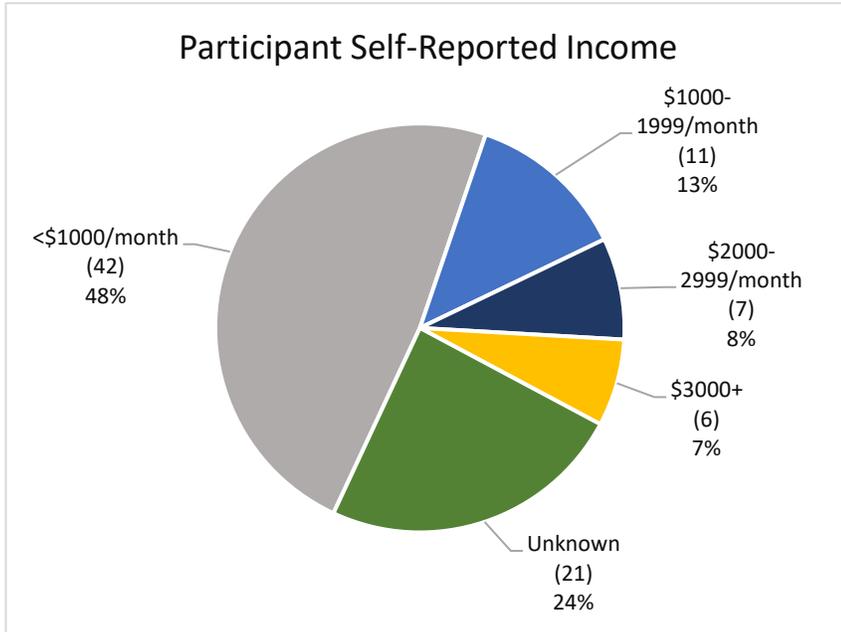
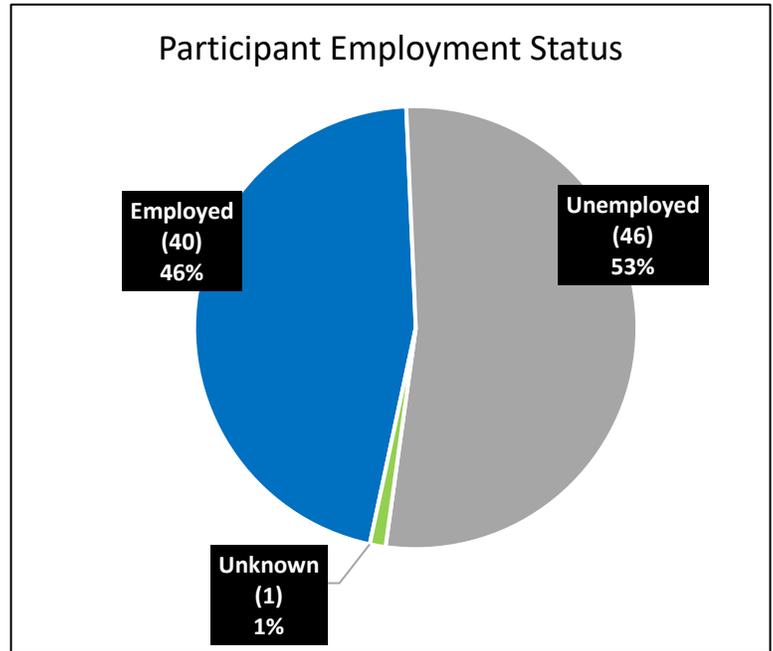


As shown in the figure below, *Housing Instability*, almost half of participants reported staying with family or friends when they were experiencing homelessness or unstable housing.



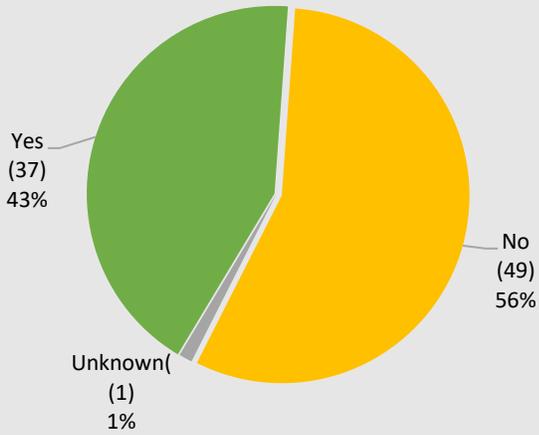
* Total housing instability reported exceeds number of participants who reported experiencing homelessness/unstable housing (22) because some participants reported more than one alternative.

As shown in the figure to the right, *Participant Employment Status*, more than half of participants reported being unemployed.



In the figure on the left, *Participant Self-Reported Income*, about half of the participants earned less than \$1000/month.

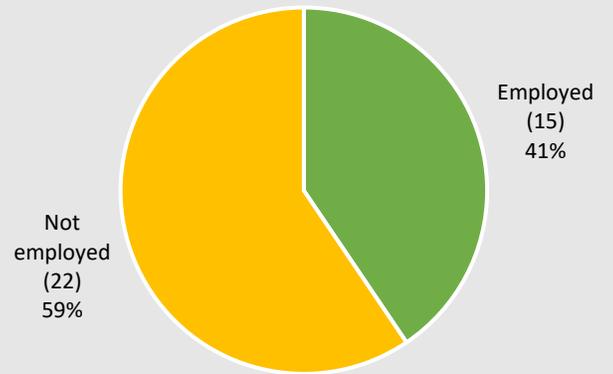
School Enrollment Status of Participants



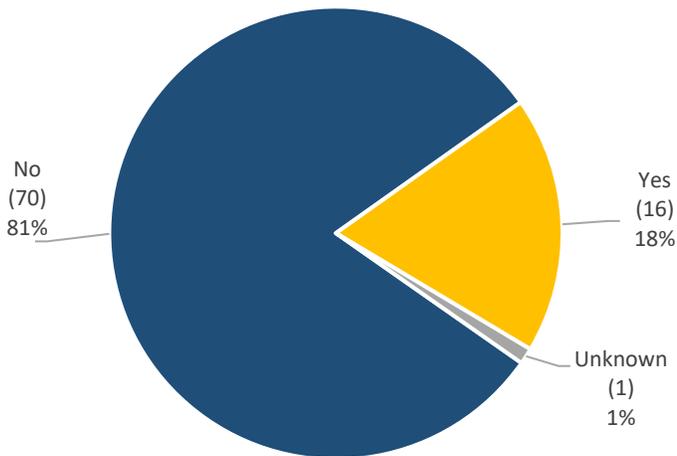
As shown in the figure to the left, *School Enrollment Status of Participants*, 43% of attendees are in school.

As shown in the figure to the right, *Employed Students*, more than half of participants who reported being in school also reported being unemployed.

Employed Students



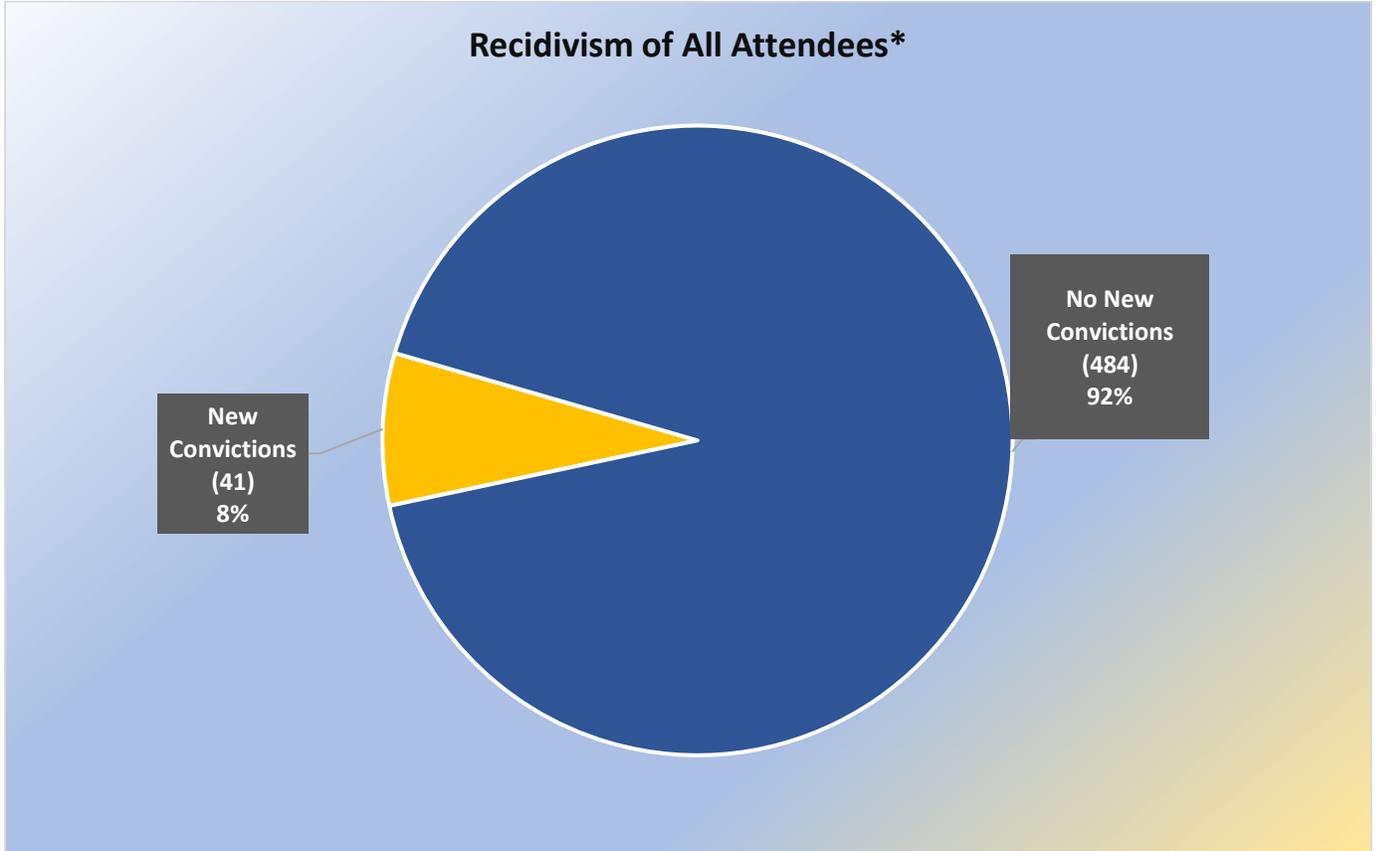
Participants Supporting Children



As shown in the figure to the left, *Participants Supporting Children*, 16 of the participants report supporting children.

Recidivism

We are currently monitoring the in-state criminal history of all participants that completed the CHOOSE 180 Workshop at 3-month intervals. As of October 2020, 92% of the participants had no new criminal convictions.

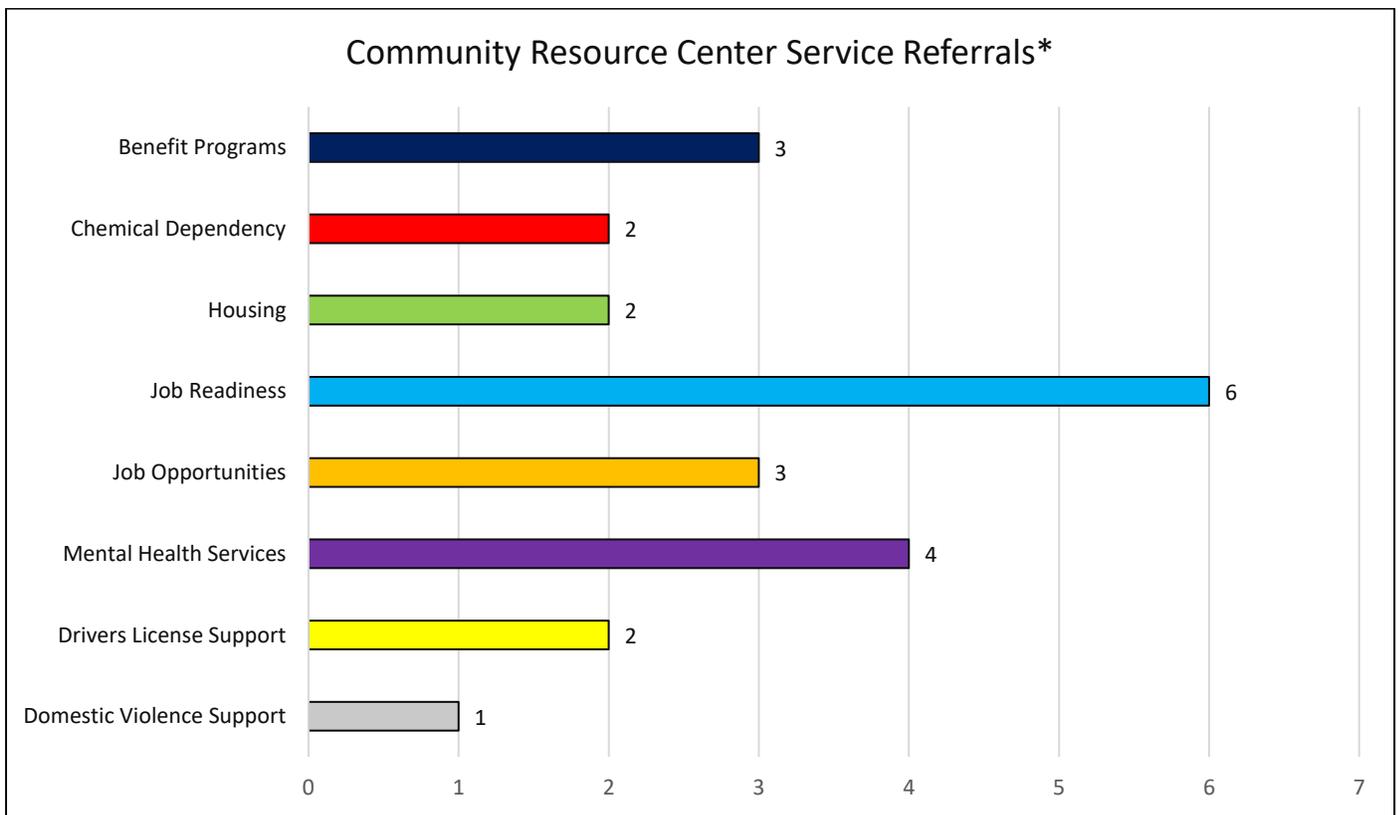


*November/December 2020 participants not included in recidivism graph because it had been less than three months since Workshop when recidivism numbers calculated.

Community Resource Center Partner

The City Attorney’s Office also partners with Seattle Municipal Court’s Community Resource Center (CRC) to provide additional services and support to participants. Generally, before and after the Workshops, our CRC partner engages with participants and conducts social service screenings to determine areas of need and referrals to appropriate resources. During the pandemic, the CRC did not engage in the same way as they had when the Workshop was in person. Thus, the number of people served this year was significantly down from previous years.

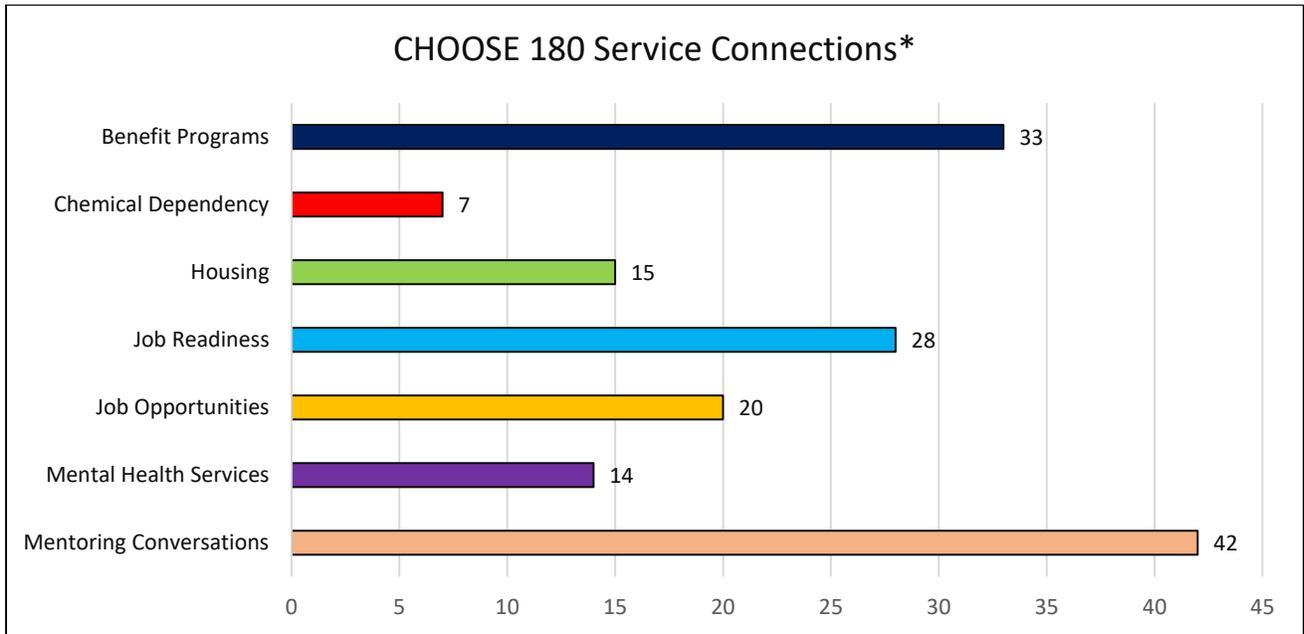
The CRC strives to support the participants and refer them to services that can help them transform their lives. The most highly sought-after services include, but are not limited to, job readiness, job opportunities, mental health services and access to benefit programs. The CRC partner historically attended the in-person Workshop and offered support for participants that met them where they were in their lives. During the pandemic, that support has mainly occurred before and after the virtual Workshop. As shown in the figure below, *Community Resource Center Service Connections*, information about the CRC was provided to every Workshop participant. Our CRC partner also directly connected with 14 young adults to conduct a social service screening and connected several of the participants to a variety of services.



*Statistics reported by Community Resource Center.

CHOOSE 180 Support beyond the Workshop

In keeping with the commitment to offer Workshop participants the opportunity to forge a new path, CHOOSE 180 is funded to provide participant support beyond the Workshop. As shown in the figure below, *CHOOSE 180 Service Connections*, CHOOSE 180 assists participants most frequently with mentoring, benefit programs, job readiness and opportunities, and housing.



*Statistics reported by CHOOSE 180.

During the 4-hour virtual diversion Workshops, young adults are encouraged to envision what positive change looks like for them. They are asked to think through and identify the types of supports they will need in order to successfully maintain positive behaviors that lead to long-term change.

The CHOOSE 180 Pivot Point Specialist helps build relationships with outside organizations in order to connect young adult program participants with employment opportunities, housing, pro-social activities, education, health services and more. These aftercare supports are offered to program participants who have successfully completed the Workshop. Upon successfully completing the Workshop, every participant is contacted at one week, 3 month, 6 month, and 12 month increments post-workshop graduation. At any time during or beyond the participant's check-ins, CHOOSE 180 will offer additional support requested. The participant may decline services or contact CHOOSE 180 at any time.

In response to the pandemic, CHOOSE 180 digitized information forms and surveys, and adapted workshops from a 4-hour session to 4 1-hour session to better match participant's work schedules and availability. To ensure they were able to meet the needs of all participants, they received Chromebook donations and purchased WiFi hotspots that they loaned to young adults as needed. The way aftercare support was provided also had to pivot. Aftercare staff focused on text and video chats and masked/social distanced home visits as needed. They also expanded their

direct financial support budget for participants and have to-date provided over \$78,000 in rental and utility assistance to participants and families.

In 2020, CHOOSE 180 worked with 30 young adults to provide aftercare resources. As CHOOSE 180 transitioned to a virtual Workshop model, Byron Corzo, the Outreach and Engagement Specialist, was excited to see something new and different unfold for the participants. He quickly responded to challenges with the virtual model and was committed to ensuring the individuals he worked with felt safe and understood while participating in the program. Byron's commitment to the work led him to recognize that, in order to reach the young people he was working with, he had to be willing to be vulnerable himself. He would often share with the participants he was coaching about his own life and how he has learned to handle challenges. One particular portion of the Workshop discusses emotions and how to address them in a healthy way. Byron recalled one specific young adult who struggled during that section. Byron was able to talk about his own journey in understanding and expressing his feelings, which seemed to greatly help the young man. The one point of feedback that individual gave at the conclusion of the workshop was that he has learned a lot about how to control his emotions, and he was very appreciative to have had Byron as his coach.



2021 Program Goals

CHOOSE 180 Plus

In 2021, the City Attorney's Office and CHOOSE 180 are expanding diversion opportunities to young people by expanding eligibility criteria and increasing eligible case types.

a. Person-Crime Incidents

As described on pages 3-4, young adults accused of some person-crime incidents will be referred for a one-on-one Workshop. This individualized attention will allow CHOOSE 180 navigators ample opportunity to work with young adults in a heightened way to address barriers to their success.

b. Firearm Incidents

CHOOSE 180 has developed curriculum focused to address the unique concerns associated with allegations of the misuse of firearms. SCAO will pilot referring young adults to CHOOSE 180 Plus for incidents involving firearms where the alleged crime is related to possession. Incidents involving the use of a firearm to threaten another will not be eligible for diversion.

c. Significant Criminal History

In reviewing recidivism statistics, SCAO noticed young adults with high levels of previous criminal history are disproportionately more likely to recidivate. SCAO will pilot referring young adults with the highest level of criminal history to CHOOSE 180 Plus.

Continued Access to Diversion

The City Attorney's Office and CHOOSE 180 are proud that there was no lapse in service in 2020 and we are committed to providing safe and accessible opportunities for diversion. In 2021, the workshops will continue to be offered virtually at least until the medical consensus concludes that it is safe to return to in-person gatherings.



Legislation Text

File #: CB 120142, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the Seattle Police Department; prohibiting training, exchanges, and partnerships with certain governments; and adding a new Section 3.28.141 to the Seattle Municipal Code.

WHEREAS, as the City Council has affirmed in Resolutions 31858 and 31928, Seattle is a Human Rights City

that endorses the rights set out in the Universal Declaration of Human Rights, and it is committed to protecting and promoting the human rights and dignity of Native peoples and all residents and visitors to Seattle, including civil, political, social, economic, and cultural rights; and

WHEREAS, through the passage of Resolution 31928, the City has affirmed Seattle as a welcoming city,

condemning all forms of oppression throughout the world, and stating that the Office of

Intergovernmental Relations will continue to alert the Seattle City Council about international issues impacting Seattle and inform Councilmembers when City Council action could contribute meaningfully to a positive outcome; and

WHEREAS, it is the Seattle City Council's intent to ensure protection of the human rights as set forth in the

Universal Declaration of Human Rights to all persons as they relate to biased policing activities and to require the policies, training, and data that safeguards against such activities in Seattle; and

WHEREAS, after a Department of Justice (DOJ) investigation found in 2011 that the Seattle Police

Department (SPD) engaged in an unconstitutional pattern of excessive force and bias, Seattle entered into a Consent Decree with the DOJ that requires the City to ensure that its policing services comply with the Constitution; and

WHEREAS, in Seattle and nationally, the increasing use of militarized units such as SWAT Teams, by the police has been demonstrated to disproportionately harm Black, Indigenous, and other People of Color; and

WHEREAS, even after nearly a decade of Seattle being subject to the Consent Decree, communities of color still experience disproportionate police use of force, as exemplified by the Seattle Police Department's 2019 Annual Use of Force Report, which found that of male individuals subjected to use of force by Seattle police in 2019, 30 percent of those individuals were Black, while Black people constitute only seven percent of Seattle's population; and

WHEREAS, in response to SPD's well-documented complaints of excessive force, including chemical weapons against thousands of protestors during the Black Lives Matter uprisings in response to the murder of George Floyd in the late Spring and Summer of 2020, the Seattle City Council took steps toward defunding SPD during the summer emergency budget vote and the 2021 city budget; and

WHEREAS, federal law, including 22 U.S.C. 2304, prohibits any United States law enforcement agency from providing security assistance to any country the government of which engages in a "consistent pattern of gross violations of internationally recognized human rights," including "torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person;" and

WHEREAS, the United Nations Declaration on Human Rights, together with the International Covenant on Civil and Political Rights and its two Optional Protocols (including the complaints procedure and on the death penalty) and the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, form the International Bill of Human Rights; and

WHEREAS, United Nations bodies periodically monitor states for compliance with these international human rights covenants that are part of the International Bill of Human Rights; and

WHEREAS, the Fourth Geneva Convention addresses humanitarian protections for civilians in a war zone, in armed conflicts where war has not been declared, and in an occupation of another country's territory; and

WHEREAS, the International Court of Justice, established in 1945 as the principal judicial organ of the United Nations, is responsible for settling, in accordance with international law, legal disputes submitted to it by states and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies; and

WHEREAS, The City of Seattle wishes to promote an encompassing vision for public safety that moves towards the abandonment of militarization and instead embraces other markers of wellness, such as respecting and protecting civil and human rights, and providing its people with access to resources including affordable housing, health services, and public transportation; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 3.28.141 is added to the Seattle Municipal Code as follows:

3.28.141 Training with certain countries prohibited

The Seattle Police Department shall not participate in any training programs, exchanges, or partnerships with the military forces of any country, or the police forces, intelligence agencies, security services, or other armed forces of any country, or engage in travel to any foreign country:

A. That is not party to the International Covenant on Civil & Political Rights and the International Covenant on Economic Social & Cultural Rights; or

B. That has been found in the last ten years by an international court or United Nations body to have been in violation of either of these covenants; or

C. That has been documented by an international court or United Nations body to have committed violations of the Fourth Geneva Convention that have not been fully remedied to the satisfaction of the court or body that documented those violations.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2021, and signed by me in open session in authentication of its passage this ____ day of _____, 2021.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2021.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

Monica Martinez Simmons, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
LEG	Greg Doss	206-755-6385

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to the Seattle Police Department; prohibiting training, exchanges, and partnerships with certain governments; and adding a new Section 3.28.141 to the Seattle Municipal Code.

Summary and background of the Legislation: The legislation would prohibit Seattle Police Department (SPD) staff and officers from participating in any training programs, exchanges, or partnerships with the military forces of any country, or the police forces, intelligence agencies, security services, or other armed forces of any country, or engage in travel to any foreign country:

- That is not party to the International Covenant on Civil & Political Rights and the International Covenant on Economic Social & Cultural Rights; or
- That has been found in the last ten years by an international court or United Nations body to have been in violation of either of these covenants; or
- That has been documented by an international court or United Nations body to have committed violations of the Fourth Geneva Convention that have not been fully remedied to the satisfaction of the court or body that documented those violations.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes X No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes X No

Does the legislation have other financial impacts to the City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

No. SPD Command Staff have indicated that SPD officers will not participate in any international trainings in 2021.

Is there financial cost or other impacts of *not* implementing the legislation?

No.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

No

b. Is a public hearing required for this legislation?

Yes

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No

d. Does this legislation affect a piece of property?

No

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

It is well accepted that police surveillance techniques, such as those that might be taught in a training provided by a foreign military, have a disproportionate impact on communities of color. Higher arrest and incarceration rates for these communities cause harm and are not reflective of disproportionate participation in criminal activities, but rather of law enforcement's focus on urban areas, lower income communities and people of color.

Arrests and incarceration result in devastating financial consequences, including loss of long-term employment viability. Disproportionate enforcement perpetuates a cycle of poverty among Seattle's low-income communities and communities of color.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

No/ NA

2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so,

explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

N/A

- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s).**

List attachments/exhibits below:

N/A

September 14, 2021

MEMORANDUM

To: Public Safety & Human Services Committee
From: Ann Gorman & Greg Doss, Analysts
Subject: Council Bill 120142 – Prohibiting SPD training with certain foreign governments

On September 14, 2021, the Public Safety & Human Services Committee will discuss [Council Bill \(CB\) 120142](#), which would restrict the Seattle Police Department (SPD) from participating in training with police, military, and/or intelligence bodies in foreign countries. This memo provides an overview and an analysis of the legislation as well as some potential policy considerations for Councilmembers.

Prohibiting Training with Certain Countries:

CB 120142 would prevent SPD from participate in any training programs, exchanges, or partnerships with the military forces of any country, or the police forces, intelligence agencies, security services, or other armed forces of any country, or engage in travel to any foreign country:

- A. That is not party to the International Covenant on Civil & Political Rights (ICCPR) and the International Covenant on Economic Social & Cultural Rights (IESCR); or
- B. That has been found in the last ten years by an international court or United Nations body to have been in violation of either of these covenants; or
- C. That has been documented by an international court or United Nations body to have committed violations of the Fourth Geneva Convention that have not been fully remedied to the satisfaction of the court or body that documented those violations.

Analysis:

Staff from the City's Office of Intergovernmental Relations (OIR) and the University of Washington's Center for Human Rights have indicated that the United Nations Human Rights Committee website maintains up-to-date information on nations that are party to the ICCPR and IESCR. However, OIR and UW staff have also indicated that there is no central clearinghouse for data on treaty violators and that it would be difficult for SPD staff to determine whether a country meets the criteria established under CB 120142.

Although narrative findings of both the Human Rights Committee and the Committee for Economic, Social and Cultural Rights (which monitors and administers the ICESCR) are available via the United Nations Jurisprudence Database, the database is not queryable. It would be burdensome for SPD staff first to develop such a list based on their reading of ten years of individual findings and then to keep the list up to date. In addition, some UN findings require a violator country to report back to the treaty's administering committee within a specified

period, describing the actions it took to remedy the finding. CB 120142 is silent on whether the ten-year exclusion as a training partner would still apply when a violation was timely remedied, but in any case, such reports are not available via the Jurisprudence Database so SPD staff would not have access to that information.

Various judicial bodies may adjudicate the Fourth Geneva Convention; but, as with the ICCPR and IESCR, there is no list or database of violators of the Fourth Geneva Convention, nor a central information source for violators who had remedied to the satisfaction of the court or body that documented those violations. The lack of any central information clearinghouse means that SPD staff would need to conduct its own research process prior to entering each new training partnership and to validate the objectivity of information sources.

In the decades since the ICCPR and the IESCR were adopted in 1966, the UN has established eight other bodies that monitor implementation of its core international human rights treaties. These bodies focus in such areas as racial discrimination; the prevention of torture; and the rights of women, children, migrant workers, and people with disabilities. Passing legislation that emphasizes compliance with only the ICCPR and IESCR does not recognize the aspects and subjects of human rights that are not explicitly addressed in those two treaties.

SPD staff have indicated that they have concerns about the language that would prohibit training programs, exchanges, or partnerships with police forces in countries that met the exclusion criteria of CB 120142. SPD staff have indicated that a broad interpretation of this language might mean that SPD would be barred from such activities as conducting collaborative research, learning or teaching best practices, discussing issues of policing and justice that have cross-national import, and providing security and support to an international delegation of City leaders in partnership with a foreign country's uniformed forces.

Potential Policy Considerations:

1. It could be difficult for SPD staff to determine the countries that had violated the ICCPR and IESCR treaties or the Fourth Geneva Convention, or to determine if a country had remedied any such violations.
2. The ICCPR and IESCR are not the only measures of whether a country's core values reflect those of the United Nations Human Rights Committee.
3. The bill's language would prohibit training programs, exchanges, or partnerships with police forces in countries that met the exclusion criteria of CB 120142. The bill does not define these terms, so it is unclear what specific activities or practices would be proscribed.

Background:

It is only the Human Rights Committee and the Committee for Economic, Social and Cultural Rights that have the authority to adjudicate the ICCPR and the IESCR. Other international courts, such as the International Court of Justice, may find violations of international law or issue non-binding advisory opinions that reference human rights violations. This work is separate from administration of these two treaties specifically.

The United Nations Human Rights Committee monitors and administers the ICCPR. This covenant applies to all entities and agents of the governments that are party to it, including all state and local governments and all private contractors who carry out government functions.¹ A substantiated complaint to the ICCPR at any of these levels would result in a country-level judicial finding by the Human Rights Committee even though the violation may be an extreme outlier in terms of general national practice.

Countries that have signed the ICCPR do not all have robust human rights protections. Several of them have made interpretive declarations – similar to United States presidential signing statements – that effectively undercut the covenant. As an example, Bahrain interprets the ICCPR articles addressing sexual discrimination, freedom of religion, and family rights within the context of Islamic Sharia law.² The United States' 1992 signing of the ICCPR was contingent on five Reservations, five Understandings, and four Declarations, each of which establishes a limitation on its commitment to compliance³.

Amendment A – Sponsor: Committee Chair Herbold

Amendment A simplifies the proposed standards that would be used to exclude foreign police agencies as training partners with SPD. In doing so, it establishes more easily verified criteria that are both based in the foregrounding of human rights and are easy for City staff to apply. Because there is no centralized public resource that contains data about violations of the two covenants to which training partners must be party, enforcing the legislation would be difficult absent this amendment.

This amendment also bars all training with foreign militaries, regardless of a country's human rights record.

The ICC operates separately and independently from the two bodies that administer the ICCPR and the IESCR and it has a different purview. It does, however, focus on identifying and holding accountable those who have committed the type of human rights violations which would also rise to the level of ICCPR and IESCR violations. Due to the ICC's high standard of cause for raising an investigation from the preliminary to the non-preliminary level, this change aligns

¹ [FAQ: The Covenant on Civil & Political Rights \(ICCPR\) | American Civil Liberties Union \(aclu.org\)](https://www.aclu.org/faq/the-covenant-on-civil-political-rights-iccpr)

² https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en

³ <https://ijrcenter.org/2017/05/31/canada-violated-iccpr-in-denying-salvadorian-asylum-on-gang-related-claim/>

with the legislation's intent and goal. The ICC maintains a current list of all countries and territories in which its investigations are ongoing as well as a record of its past findings.

Next Steps:

If the Committee votes to recommend passage of CB 120142, then the Council could vote on the bill at its September 27, 2021, meeting.

Attachments:

1. United Nations Treaty Signatories and Ratifiers
2. Amendment A (CM Herbold)
3. Amendment B (CM Sawant)

cc: Esther Handy, Director
Dan Eder, Deputy Director
Aly Pennucci, Policy and Budget Manager

Attachment 1: United Nations Treaty Signatories and Ratifiers

United Nations Treaty Signatories and Ratifiers

As of September 2019, 173 countries are signatories to the ICCPR. An additional six countries have ratified but not signed this covenant, which means that they are not fully bound to uphold the protections it names. Those countries are China, Comoros, Cuba, Nauru, Palau, and Saint Lucia. Fifteen other states have neither ratified nor signed the covenant (Bhutan, Brunei, Kiribati, Malaysia, Micronesia, Myanmar, Oman, Saint Kitts and Nevis, Saudi Arabia, Singapore, the Solomon Islands, South Sudan, Tonga, Tuvalu, and the United Arab Emirates).

As of July 2020, 171 countries are signatories to the IESCR. Comoros, Cuba, Palau, and the United States have ratified but not signed this covenant. Andorra, Botswana, Bhutan, Brunei, Kiribati, Malaysia, and the Federated States of Micronesia have neither ratified nor signed it.

The Fourth Geneva Convention, which 196 countries have ratified, addresses protections for civilians in a war zone or an area in which armed conflict is taking place. The International Criminal Court (ICC) or an ad hoc UN tribunal can adjudicate potential violations. Many countries also have the statutory jurisdiction to prosecute war crimes, including violations of this Convention, at the federal level and/or in military courts. The ICC has over 20 potential cases in some stage of review, which include situations in the “State of Palestine” (for alleged crimes committed since 2014) and in Afghanistan (for alleged crimes committed since May 2003; this investigation may lead to a finding against United States actors), among many others. Some of these situations have been under review for over 10 years due to the strict investigative requirements of the ICC statute. The United States and Israel, among other countries, have informed the UN Secretary General that they do not recognize the ICC’s statute as currently written thus do not have legal obligations before the Court.

- 1) [FAQ: The Covenant on Civil & Political Rights \(ICCPR\) | American Civil Liberties Union \(aclu.org\)](#)
- 2) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en
- 3) <https://ijrcenter.org/2017/05/31/canada-violated-iccpr-in-denying-salvadorian-asylum-on-gang-related-claim/>
- 4) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23750&LangID=E>
- 5) <https://www.housingrightswatch.org/content/recent-decision-un-cescr-committee-deems-spain-violation-right-adequate-housing-third-time>

Amendment A

to

CB 120142

Sponsor: Councilmember Herbold

Change standards for exclusion as a training partner to improve enforceability

Amend Section 1 of the bill, to add the following language as shown:

Section 1. A new Section 3.28.141 is added to the Seattle Municipal Code as follows:

3.28.141 Training with certain countries prohibited

The Seattle Police Department (SPD) shall not participate in any training programs, exchanges, or partnerships with the military forces of any country, ~~((or the police forces,)) intelligence agencies, security services, or other armed forces of any country~~, or engage in travel to any foreign country or territory for the purpose of training with a foreign military. SPD shall not participate in any training programs, exchanges, or partnerships with the police forces of any country or engage in travel to any foreign country or territory:

A. That is not party to the International Covenant on Civil & Political Rights and the International Covenant on Economic Social & Cultural Rights; or

B. ~~((That has been found in the last ten years by an international court or United Nations body to have been in violation of either of these covenants))~~ That within the country or territory's boundaries exists: a situation under non-preliminary investigation by the International Criminal Court; or an actor against which that Court has found a violation in the last ten years.

~~((; or~~

~~C. That has been documented by an international court or United Nations body to have committed violations of the Fourth Geneva Convention that have not been fully remedied to the satisfaction of the court or body that documented those violations.))~~

Effect: The proposed amendment simplifies the proposed standards that would be used to exclude foreign police agencies as training partners with SPD. In doing so, it establishes more easily verified criterion that are both based in the foregrounding of human rights and are easy for City staff to apply. Because there is no centralized public resource that contains data about violations of the two covenants to which training partners must be party, enforcing the legislation would be difficult absent this amendment.

This amendment also bans all training with all foreign militaries, regardless of a country's human rights record.

Background: The ICC operates separately and independently from the two bodies that administer the ICCPR and the IESCR and it has a different purview. It does, however, focus on identifying and holding accountable those who have committed the type of human rights violations which would also rise to the level of ICCPR and IESCR violations. Due to the ICC's high standard of cause for raising an investigation from the preliminary to the non-preliminary level, this change aligns with the legislation's intent and goal. The ICC maintains a current list of all countries and territories in which its investigations are ongoing as well as a record of its past findings.

Legal review pending.

Amendment B to CB 120142 SPD TRAINING LEGISLATION

Sponsor: Councilmember Sawant

Modify Geneva Conventions exclusions criteria to include Task Force Findings

Amend 3.28.141, subsection C, as follows:

C. That has been documented by an international court, ~~((or))~~ United Nations body, or a fact-finding mission by an intergovernmental or international human rights organization to have committed violations of the Fourth Geneva Convention that have not been fully remedied to the satisfaction of the court or body that documented those violations (where applicable).

* * *

Effect: Adds fact finding missions to the exclusion criteria specified for the fourth Geneva Convention. This amendment may result in more nations meeting the criteria of a country that has violated the Fourth Geneva Convention and would not be allowed to train with SPD.