

## MEMORANDUM

**To:** Committee on Gender Equity, Safe Communities & New Americans  
**From:** Asha Venkataraman, Central Staff  
**Date:** February 2, 2017  
**Subject:** Pre-filing Diversion Initial Implementation Plan

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### INTRODUCTION

In the 2017 Adopted Budget, the Council allocated funding to the City Attorney's Office (LAW), Seattle Municipal Court (SMC), and Finance and Administrative Services (FAS) for a pre-filing diversion program addressing misdemeanors and other cases against youth and young adults. The Council allocated about \$408,000 to the program, with the bulk of funding going to LAW for a Strategic Advisor to oversee the program, an assistant city prosecutor, and funding for referrals to restorative justice programs and Family Intervention and Restorative Services (FIRS) diversion. SMC received funding for a probation counselor to coordinate services through the Court Resource Center and monitor compliance. FAS received funding to handle relicensing of persons with Driving While License Suspended in the third degree (DWLS3) and No Valid Operator's License (NVOL) cases. The Council intended the program to fund diversion of 200 cases in 2017.

The green sheet (300-1-E-1) providing this funding stated that

[a]ll departments are expected to work on and implement a pre-filing diversion program in a coordinated and integrated manner to ensure effective use of resources and monitor expected outcomes. LAW is expected to report back to Council periodically, but the first report should occur by January 15 to the Committee on Gender Equity, Safe Communities, & New Americans (GESCNA) regarding how LAW is planning and implementing this program in an integrated and coordinated manner.

Councilmembers also sent a letter to City Attorney Pete Holmes on December 16, 2016, containing a list of questions and issues for LAW to address and resolve with stakeholders prior to program implementation (Attachment A). Specifically, for the January report, the Council expected LAW to present a plan that included how it planned to reach consensus on the questions with relevant stakeholders; a list of relevant stakeholders to be consulted; and a Racial Equity Toolkit (RET) Analysis.

On January 12, 2017, LAW provided a report on its initial implementation plan for the program (Attachment B). This memorandum summarizes the report and identifies specific issues that may be of concern to Councilmembers.

### SUMMARY OF REPORT ON THE INITIAL IMPLEMENTATION PLAN

In Section I and II, the report provides an introduction and background regarding LAW's jurisdiction over misdemeanors and gross misdemeanors committed by adults and driving crimes committed by persons over 16. It also describes the City Attorney's discretion to file a criminal charge or divert an individual from the traditional criminal justice filing process (Attachment B, Sections I and II, pp. 4-5).

Section III describes the program's organization, identifying Jenna Robert as the strategic advisor organizing and leading the pre-filing diversion program, Kerry Werner as the assistant city prosecutor administering it, and Criminal Division Chief Kelly Harris as ultimately managing it. This section also states LAW's intention to formalize specific screening criteria to select cases for diversion prior to program implementation, including criteria such as the crime committed, criminal history, and age of the suspect (Attachment B, Section III pp. 6-7).

Section IV divides the overall diversion program into three component programs (Attachment B, Section IV, pp. 8-9):

1. **Family domestic violence:** Non-intimate partner DV crimes committed by 18-24 year old individuals, appropriate for FIRS referrals;
2. **Restorative Justice:** General crimes committed by 18-24 year old individuals suited for referrals to community restorative justice practitioners; and
3. **Mainstream:** Lower level non-public safety crimes committed by 16-24 year old individuals with little or no criminal history (including DWLS3 and NVOL cases) suited for referral to FAS and its contractor for relicensing, referral to the Court Resource Center for needs assessments, and imposition of community service hours.

Section V of the report describes LAW's intention to coordinate with city departments, including SMC, FAS, and the Office for Civil Rights, as well as the King County Department of Public Defense, community organizers, and community-based service providers. LAW plans to implement the three component programs in phases, with the mainstream program launching the earliest, and the restorative justice and family domestic violence components launching later. LAW outlines the implementation steps for each program in this section. (Attachment B, Section V, pp. 10-13).

Lastly, LAW describes its intent to evaluate each of the programs separately, and plans to record each participant's age and race, as well as the victim and the police precinct. LAW also intends to use participant evaluations to collect feedback about impacts beyond the planned reduction in jail numbers. (Attachment B Section VI, p. 14).

## **ISSUES FOR CONTINUING DEVELOPMENT**

The report directly answers several of the questions laid out in the December 16 letter from the Council. It is likely too early in the program's development for LAW to answer many of the outstanding questions in the letter, but there are several key elements that the report does not include that may be of interest to Councilmembers.

First, the report does not describe whether LAW engaged with any public agencies or community members when drafting the report nor does it provide a plan about engagement going forward. Council's intent in asking for reports back to GESCNA was to see "how LAW is planning and implementing this program *in an integrated and coordinated manner*" (emphasis added). As one of biggest challenges in successfully implementing a multi-departmental program in which community providers and organizers are partners is open communication and early coordination, it is important that LAW identify not only a specific list of partners and stakeholders, but document how LAW engaged and came to agreement on the contents of the report and plans to continue to do so. The report only mentions broadly the other departments with which LAW intends to directly coordinate and

“community organizers and community-based service providers.” It is critical that LAW identify specific actions planned for engagement regarding a variety of open issues, including approaches, goals, and outcomes, and collection and sharing of accurate and useful data.

Second, the Council requested that LAW complete a RET to form the basis of the answers to its question. Because of the magnitude of racially disproportionate impact throughout the criminal justice system, it is crucial that such considerations are acknowledged and reflected when engaging community, planning the program, and implementing it.

Third, though the report describes phasing each of the component programs, it does not include a timeframe for rolling out each program. The report describes specific steps for each of the three programs to be developed and implemented, but it would be helpful to know how long LAW believes each of these steps will take, especially if other public agencies and community partners are to be involved in development. The funding Council allocated for 2017 is intended to divert 200 cases. It may be useful for LAW to determine whether implementation of one of three diversion programs for 6 months out of the year will achieve that goal.

Lastly, LAW’s description of its plans for evaluation need further development. The report mentions a few elements it plans to track, such as participant age and race, but does not specifically describe how LAW will use this data to evaluate racial disparities, efficacy of the program, reduction in jail numbers, or practical impacts on participants. It also mentions implementing participant evaluations to gather feedback, but needs to expand on how LAW will use this anecdotal feedback to improve the program and associated services, and how experienced community practitioners will play a role in providing information about participants or desired outcomes.

**Attachments:**

- A. Pre-Filing Diversion Letter
- B. SCAO Pre-Filing Diversion Report 001 to City Council

cc: Kirstan Arestad, Central Staff Director  
Ketil Freeman, Supervising Analyst



# Seattle City Council

December 16<sup>th</sup>, 2016

Pete Holmes, Seattle City Attorney  
701 5th Ave #2050,  
Seattle, WA 98104

Dear City Attorney Holmes:

Council recently allocated \$407,778 of the General Subfund in 2017 for pre-filing diversion services, with the majority of those funds directed to the City Attorney's Office (LAW). As part of that allocation, Council stated:

All departments are expected to work on and implement a pre-filing diversion program in a coordinated and integrated manner to ensure effective use of resources and monitor expected outcomes. LAW is expected to report back to Council periodically, but the first report should occur by January 15 to the Committee on Gender Equity, Safe Communities, & New Americans (GESCNA) regarding how LAW is planning and implementing this program in an integrated and coordinated manner.

As the program planning process gets underway, we are writing to clarify the expectations for the reports back to Council, and to outline a series of questions that should be addressed in the next few months, in partnership with relevant public agencies and community members. Our expectation is that these questions are answered to the satisfaction of these many stakeholders before program implementation, and by modeling the use of peacemaking circles to identify and resolve differences in opinion. These questions include:

## Overarching Questions

- What does "diversion" mean?
- How will this program balance the potential need for institutional oversight with the intention to create a community-based system?
- What lessons can we learn from other pre-filing diversion programs?
  - What training will be required of the practitioners and consultants?

## Ownership of the Program

- Who in your department will be the primary point of contact for the City Council?
- Who in your department have you identified as the primary person(s) responsible for the program's effectiveness?
- As a result of this pre-filing diversion services allocation, have new hiring decisions been made?

## Selecting and Assigning Cases

- How will cases appropriate for diversion be identified?

- Who will be able to make that determination, and at what stage in the process?
- What criteria will be used? Will there be an analysis of assigning the appropriate diversion process that is appropriate to the potential charge?
- How will diversion practitioners or consultants be assigned?
  - What is the role for community in that process?
  - How can we ensure that cases are referred to culturally relevant practitioners?

Supporting Participants and Process

- What support systems will exist for those referred to the diversion programs, after their obligation is completed? How would participants get connected to that support?
- What happens if someone does not complete the diversion program?
- How will we ensure that all participants' constitutional rights are protected during the program? How will we ensure their privacy is protected?
- Can the City provide spaces and other logistical support for RJ circles to be conducted?

Evaluation

- How will we ensure that we are not duplicating the efforts of other established diversion programs?
- What is the anticipated method of evaluating the efficacy of the program?
  - How can we ensure that programs are on track to reduce disparities in arrest and prosecution?

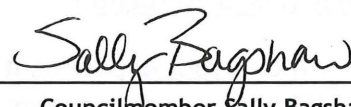
At the first report back in January, Council expects that LAW will present a plan to reach consensus on these questions, and any others that arise, among the stakeholders in this process. This plan should include the list of stakeholders to be consulted, which Council expects to represent the communities most impacted by the criminal justice system in Seattle, in addition to Seattle Municipal Court, other relevant City departments, County agencies, and nonprofits. The plan should also include a Racial Equity Toolkit analysis that forms the basis of the answers to the questions above.

Thank you for your consideration.

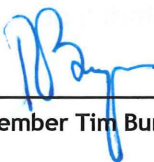
Sincerely,



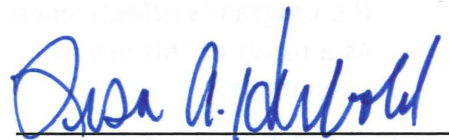
Council President Bruce Harrell



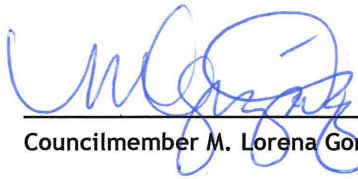
Councilmember Sally Bagshaw



Councilmember Tim Burgess

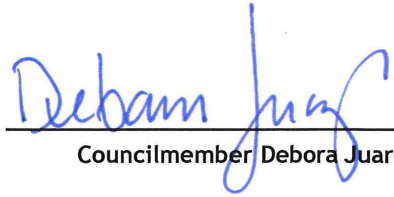


Councilmember Lisa Herbold



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Councilmember M. Lorena González



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Councilmember Debora Juarez

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Councilmember Kshama Sawant



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Councilmember Rob Johnson



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Councilmember Mike O'Brien

**Attachment B – SCAO Pre-Filing Diversion Report 001 to City Council**

# Seattle Misdemeanor Pre-Filing Diversion Program

*A service-based alternative to prosecution and detention.*



Report to City Council  
Initial Implementation Plan  
January 15, 2017

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## I. Introduction

Seattle City Council allocated \$407,778 of the General Subfund in 2017 for pre-filing diversion services. The Council stated, “All departments are expected to work on and implement a pre-filing diversion program in a coordinated and integrated manner to ensure effective use of resources and monitor expected outcomes.” Given that the majority of the funding is directed to the Seattle City Attorney’s Office (SCAO), the SCAO is expected to report to Council periodically with the first report to be delivered by January 15 to the Committee on Gender Equity, Safe Communities, & New Americans (GESCNA). The SCAO will meet this request by reporting quarterly to Council.

On December 16, 2016, Council President Bruce Harrell and Councilmembers Sally Bagshaw, Tim Burgess, Lisa Herbold, Lorena González, Debora Juarez, Rob Johnson and Mike O’Brien submitted questions to the SCAO that they expected to be addressed in the next few months. The purpose of this first report, 001, is to provide Council with an overview of the SCAO’s overall Pre-Filing Diversion implementation plan and to answer as many of the questions posed by Council as practical at this time.

## II. Background

### **Seattle City Attorney Jurisdiction**

The SCAO has jurisdiction over the majority of all misdemeanors and gross misdemeanors that occur in Seattle for Defendants 18 years of age and older. The SCAO also has jurisdiction over driving crimes committed by Defendants 16 years of age and older.<sup>1</sup> City Attorney Holmes wants the work of the Criminal Division to extend beyond the traditional role of prosecuting criminals; he has directed the Division to pursue a broad range of progressive programs and activities designed to reduce or prevent crime, solve problems and empower neighborhoods.

### **Diversion**

Diversion addresses criminal behavior with appropriate access to services without labeling an individual as a criminal defendant and triggering substantial collateral consequences that can follow a person for life. In the criminal justice system, the mere filing of a criminal charge, regardless of the ultimate outcome of the case, may impact for life the ability to gain employment and obtain housing.

### **Filing Discretion**

The elected City Attorney has sole discretion to determine if every possible criminal violation of the Seattle Municipal Code will be filed as a criminal charge, thus initiating a criminal case in Seattle Municipal Court (SMC). If a decision is made to file a case, the City Attorney also has sole discretion to set forth the City's sentencing recommendation. This recommendation can include post-filing diversion and therapeutic-based sentencing alternatives.

In his two terms, City Attorney Holmes has demonstrated a commitment toward being a catalyst for progress in the criminal justice system. He has been an outspoken critic of the War on Drugs,

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<sup>1</sup> In 2015, the division received 13,224 total reports from SPD and filed criminal charges on 7,444 cases.

dismissing all pending marijuana possession cases upon taking office on Jan. 1, 2010, and declining to file any subsequent charges. The following year, he became a primary sponsor of Initiative 502, culminating in Washington's historic 2012 vote to legalize, regulate and tax marijuana for adult use. He remains active in shaping Washington's fledgling regulated marijuana industry. Also in his first year in office, City Attorney Holmes acted to dramatically reduce prosecutions of DWLS3 (driving while license suspended, third degree), otherwise known as "driving while poor." To prevent any unintended immigration consequences of filing a misdemeanor charge, he instructed prosecutors to stop requesting suspended jail sentences totaling 365 days in order to avoid mandatory deportations of documented immigrants convicted of minor crimes. The following year, City Attorney Holmes helped convince the Legislature to limit the maximum jail sentence for every misdemeanor in the state to 364 days, thus limiting the reach of dysfunctional federal immigration laws across the state. He is an ardent supporter of Seattle's Race & Social Justice Initiative.

City Attorney Holmes has supported post-filing diversion efforts offering Pre-Trial Diversion recommendations for first-time offenders and alternative sentencing recommendations for Defendants who engage in the therapeutic Community Court, Mental Health Court and Veterans Treatment Court. Last year, the SCAO began our first Pre-File Diversion efforts with a Restorative Justice pilot project.

City Attorney Holmes and Criminal Division Chief Kelly Harris are committed to expanding our diversion efforts through Pre-Filing Diversion because they recognize the significant consequences triggered by filing a criminal charge and giving a person a criminal history.

### III. Program Organization

#### **Leadership**

Jenna Robert has been appointed to the Strategic Advisor III position and Kerry Werner has been designated the Assistant City Prosecutor who will administer our pre-filing diversion and restorative justice programs.

Jenna Robert has been an Assistant City Prosecutor full-time for the SCAO since April 2011. Prior to being hired full-time, she was a legal intern and temporary attorney for the SCAO and worked as a contract attorney for the King County Prosecutor's Office and for the Law Office of Lynn Moberly who prosecutes for several municipalities on the East Side. In the SCAO she practiced on the General Trial Team unit, the Domestic Violence unit, the Filing unit, the Early Plea Unit, and the Specialty Court unit which handles the therapeutic courts at SMC. She was the lead prosecutor for the Veterans Treatment Court. She also took over as the lead prosecutor for the Restorative Justice Pilot Project toward the end of the pilot. Robert's commitment and desire to pursue alternatives to the mainstream criminal justice system are evidenced by the year she spent as a full-time volunteer youth care worker at a residential home for boys 12-18 years of age, and the summer she spent as an intern with the Seattle Community Law Center working on the Disability Homeless Advocacy project doing outreach regarding potential Social Security benefits in two downtown Seattle homeless shelters.

Kerry Werner has been an Assistant City Prosecutor for the SCAO since June 2016. She started as an intern in 2014 assigned to the Domestic Violence unit and later the General Trial Team. She has practiced in the Early Plea Unit and the General Trial Team. She graduated from University of Wisconsin with a bachelor's degree in Legal Studies, Psychology, and Criminal Justice and received her J.D. from the University Of Washington School Of Law. She became especially interested in youth at risk while acquiring her B.A., specifically focusing on course work that intersected the fields of psychology, social

work, sociology, and the law. As a law student, Werner expanded her interest to young adults at risk. She participated in the UW Street Law clinic through which she taught Seattle-area high school students important aspects of the law, specifically their 1<sup>st</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Amendment rights as well as their social responsibilities as community members. Werner quickly became a valued member of the City Attorney team.

The Pre-Filing Diversion Program will be ultimately managed by Criminal Division Chief Kelly Harris. The Pre-Filing Diversion Team embraces the great responsibility that the SCAO has to ensuring public safety while acknowledging the limits of traditional prosecution and committing to a rehabilitative Pre-Filing Diversion program.

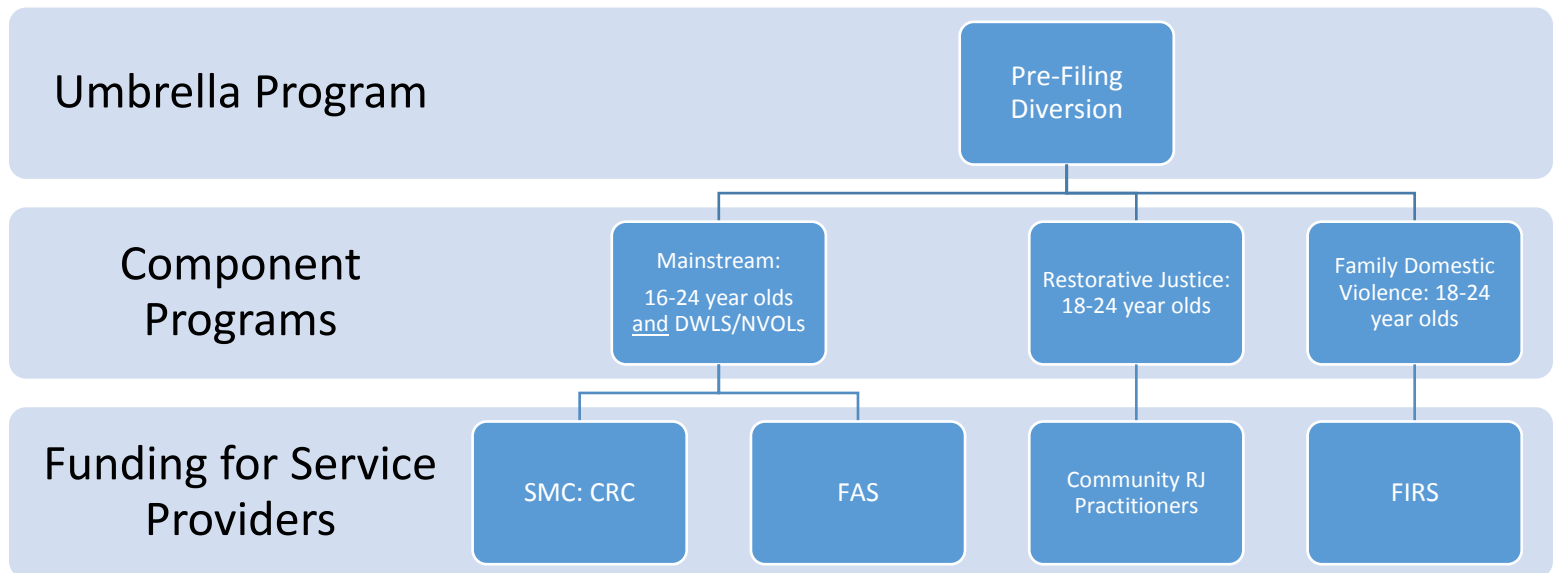
### **Selection of Cases for Diversion**

Only cases that meet SCAO filing standards will be diverted; diversion will not be used to address incidents where the SCAO would otherwise decline the case. As much as practical, specific, straight-forward criteria will be used to identify what cases will be eligible for the different diversion programs. Objective criteria is necessary to uniformity of charging/diversion and to protect against any implicit bias or unintentional disparity that could otherwise occur.

Specific screening criteria will be formalized before implementation of the programs. Incident reports will be screened using the criteria by the Assistant City Prosecutor assigned to the Pre-Filing Diversion program. Criteria will include the crime committed, the suspect's criminal history, and the age of the suspect (in regards to the program specifically targeted to 16-24 year olds).

#### IV. Program Structure

The Pre-Filing Diversion Program has three component programs with separate respective funding sources. The following figure illustrates the complete program structure:



##### **Mainstream Pre-Filing Diversion**

The SCAO and SMC are partnering to develop a program similar to the Pre-Trial Diversion program to address lower level non-public safety crimes committed by individuals 16-24 years of age by persons with little to no criminal history. The program will allow persons to avoid the collateral consequences of ever having been charged with a crime. The program will hold offenders accountable for their actions by requiring the completion of community service hours, but more importantly, will seek to provide access to services in an effort to assist offenders with their specific needs, reducing the rate of recidivism and giving offenders a chance to avoid the lasting effects of a criminal record.

The SCAO will also specifically target Driving While License Suspended in the Third Degree and No Valid Operator's License cases for offenders of all ages with a goal of relicensing. The Council has specifically allocated funding for 13 cases to support this effort through the Finance and Administrative Services Department (FAS) which contracts with Legacy of Equality, Leadership and Organizing (LELO) on relicensing efforts.

### **Restorative Justice Diversion**

Last year, the SCAO began our first Pre-Filing Diversion program in the form of a Restorative Justice Pilot Project. The pilot focused on 18-24 year-olds. The SCAO seeks to improve and expand our pilot project by coordinating with community groups to provide Restorative Justice alternatives to cases of crimes committed by 18-24 year olds where there is a need to address the harm committed by the suspect and repair the harm done to the victim.

### **Family Domestic Violence Diversion**

The SCAO seeks to divert a number of Family Domestic Violence cases involving 18-24 year olds. This program will exclude intimate-partner cases and instead focus on incidents between other family members. The program will rely on prosecutors and advocates to identify potential cases. The SCAO will partner with a community provider(s) to conduct a needs-based assessment to determine the appropriate Family Intervention and Restorative Services. The SCAO sees a natural overlap in the Restorative Justice and Family Domestic Violence Diversion programs.

## **V. Development of the Programs**

### **Coordination Efforts**

Strategic Advisor Jenna Robert and Assistant City Prosecutor Kerry Werner are working full-time on development and implementation of the Pre-Filing Diversion Programs. City Attorney Holmes, Criminal Division Chief Harris, Criminal Division Manager Brialle Engelhart, Case Preparation Supervisor Courtney White, IT Manager Ken Carlstadt and a wide range of SCAO staff will all have supportive roles.

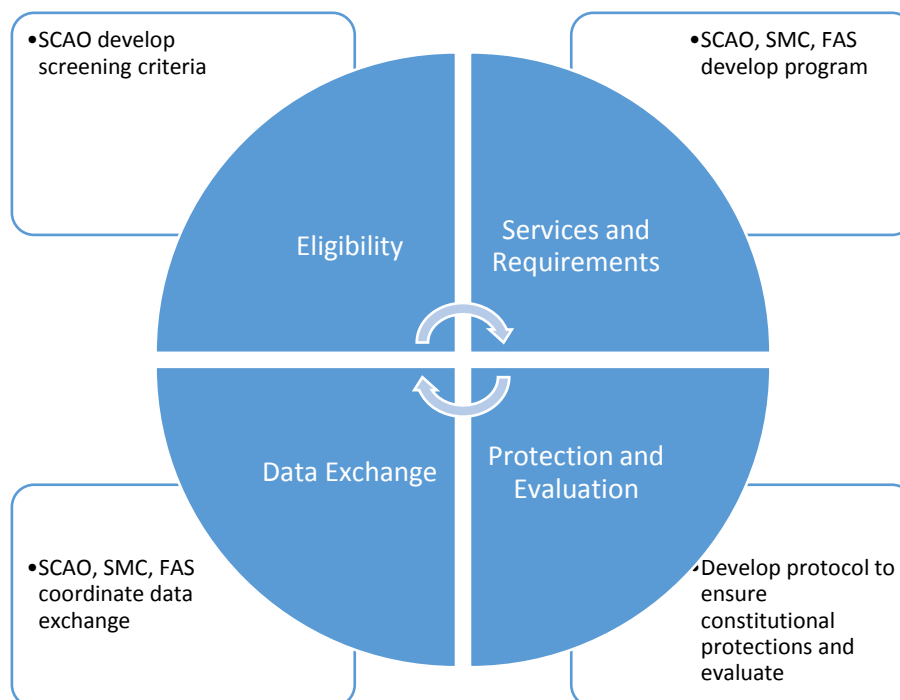
Further, the SCAO seeks direct coordination with a number of City departments as well as community organizers and community-based service providers in developing and implementing the component programs. Council allocated funding specifically for the Pre-Filing Diversion mainstream program to the SCAO, SMC and FAS. Council also provided funding per case for the Restorative Justice component program (consultant) and the Family Domestic Violence component program (consultant). The SCAO also views the Office of Civil Rights (OCR) and King County Department of Public Defense (DPD) as strategic partners in furthering Seattle's goal of Zero Youth Detention and the protection of participants' constitutional rights. Additionally, the SCAO seeks to investigate other diversion programs within the City and the country to assist in developing best practices.

Given the vast expanse of these programs, the inherent intricacies to each program, and the commitment to the careful and intentional designing and implementation of these component programs, the SCAO will implement the specific programs in phases.



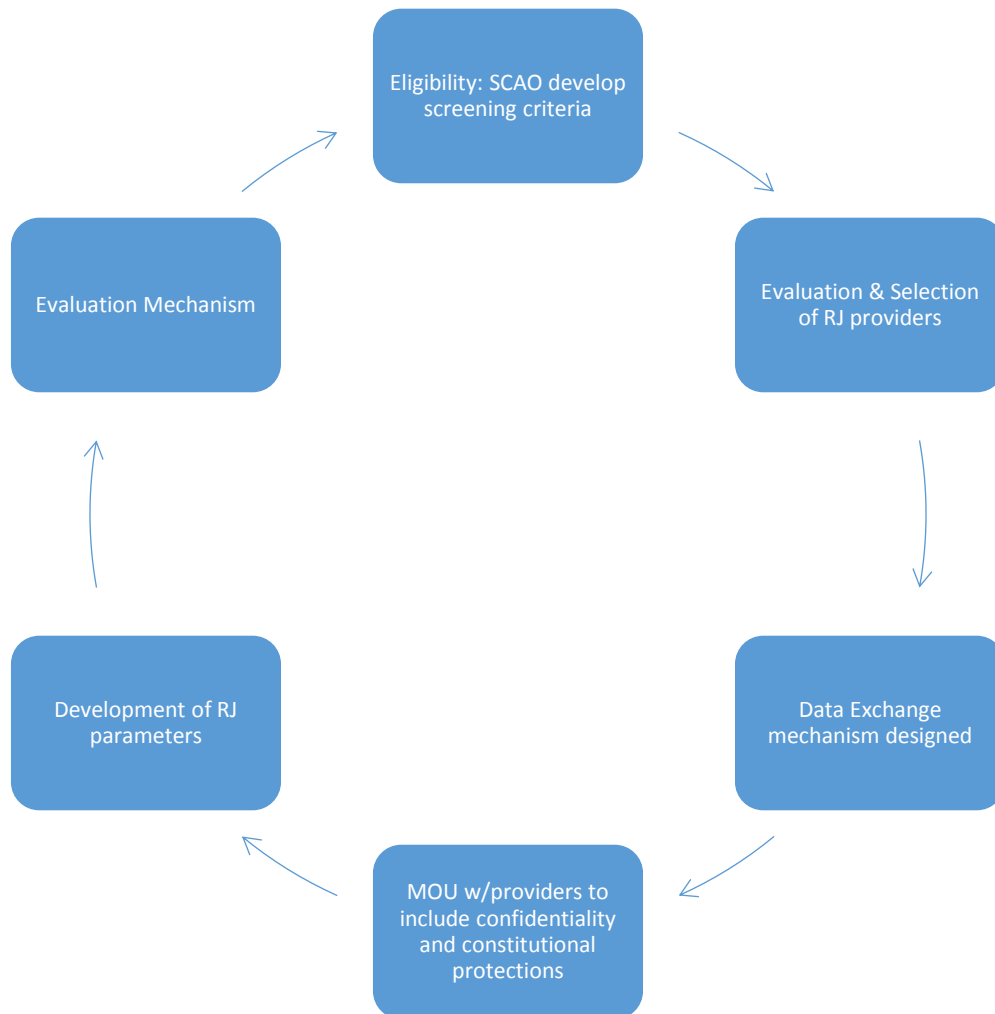
### Mainstream Pre-Filing Diversion

The Mainstream Pre-Filing Diversion program planning is far ahead of the other two and will likely launch first. The SCAO and SMC have been in planning discussions about this program for several months. This program will affect the largest number of participants, and is most feasible to implement first, given that Council allocated funding for a dedicated probation officer for six months in 2017 to administer services to participants. This component program relies on participants' access to services through SMC's Court Resource Center (CRC). The CRC offers a wide range of services including: DSHS benefit assistance, chemical dependency assessments, substance abuse services, linkage to housing and employment services, and mental health services. Given that a primary goal of this program is to support the service needs of participants, the SCAO will work closely with SMC to ensure that the CRC has the capacity to adequately serve participants and report to Council if there is a struggle to meet the specific needs of the participants. The program's success is largely dependent on a fully funded, staffed and robust CRC. The SCAO has identified the following steps to implement this program:



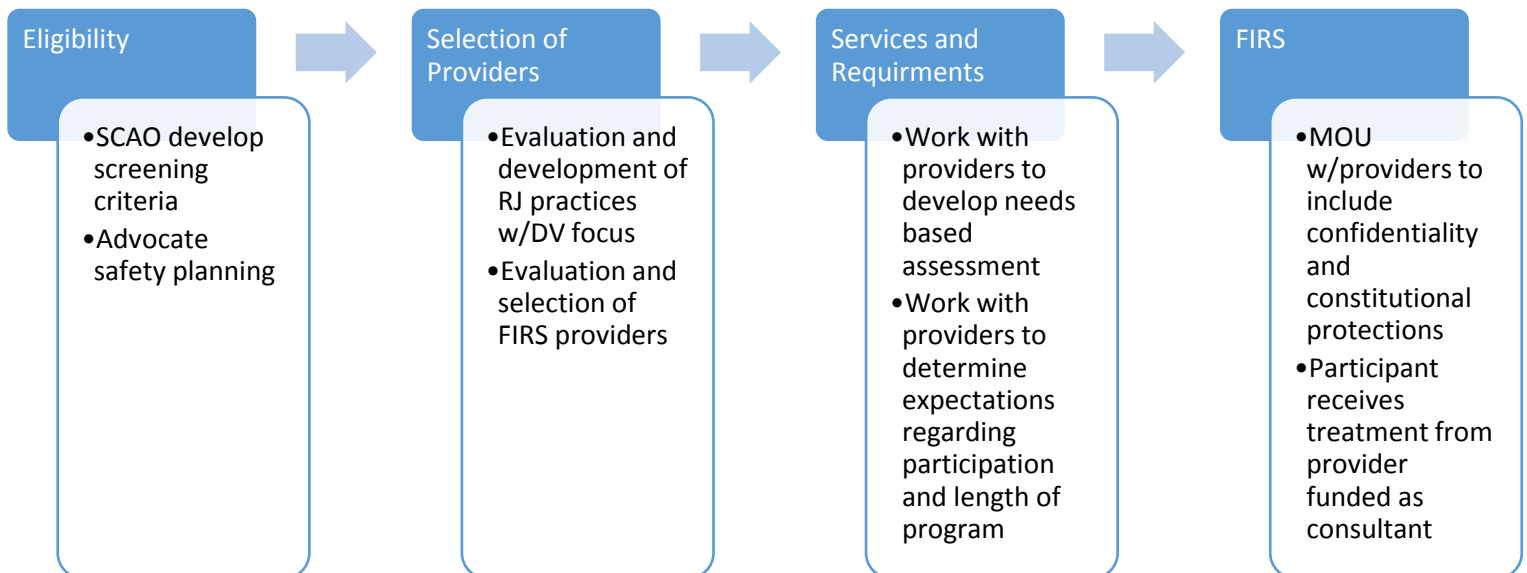
**Restorative Justice Diversion**

The implementation of the Restorative Justice program will be a coordinated effort between the SCAO and Restorative Justice practitioners in the community, to determine how to best develop a diverse group to conduct Restorative Justice Circles. The initial screening of these cases to be completed by the SCAO is more involved given the substantial impact on the victims of the crimes eligible for Restorative Justice Diversion. The SCAO has identified the following steps to implement this program:



### Family Domestic Violence Diversion

The implementation of the Family Domestic Violence cases involving 18-24 year-olds using Family Intervention and Restorative Services also involves substantial coordination with community service providers and the development of a careful screening process to assess initial and potential ongoing safety risks. Acknowledging the natural overlap in the Restorative Justice and Family Domestic Violence Diversion programs, the SCAO seeks to work with community on development of Restorative Justice practices with a Domestic Violence focus. The SCAO has identified the following steps to implement this program:



## VI. Evaluation

The SCAO acknowledges the importance of evaluating the efficacy of the Pre-Filing Diversion programs and whether the programs positively affect the racial disparities we currently see in cases filed in SMC. The SCAO will seek to implement separate evaluation methods for each of the diversion programs designed to address the unique facets of each program. Some of the criteria we intend to evaluate for each component program are shown in the table below:

Component program	Participant Race	Participant Age	Victim	Precinct
Mainstream				
Restorative Justice				
Family Domestic Violence				

Further, the SCAO is committed to making a lasting impact on participants' lives by providing them access to needed services. Thus, we will seek to evaluate beyond simply jail reduction numbers, but also look for the practical impact on participants. In order to assess this impact, the SCAO will implement participant evaluations so that participants will be able to provide feedback as to such things as why they chose to participate, whether they felt like they understood what they were signing up for, whether they felt like their constitutional and privacy rights were being respected, what services they were connected to, whether the process was beneficial and any suggestions for improvement.

## **VII. Conclusion**

The SCAO is excited for all the benefits these programs will have for the people of Seattle. We look forward to providing you report 002 in the second quarter this year. We appreciate the funding allocated by Council and take serious the mandate to make this a coordinated, successful diversion program.