



SEATTLE CITY COUNCIL
CENTRAL STAFF

Realigning Seattle's Criminal Legal System through a Public Health Approach:

The intersection between Community
wisdom and evidence-based practices

Carlos D. Lugo

Analyst

Seattle City Council Central Staff



CRIMINAL LEGAL SYSTEM STRATEGIC PLAN

Carlos D. Lugo, Analyst, Seattle City Council Central Staff

Table of Contents

Executive Summary	2
Chapter 1: Criminal Legal System Strategic Plan Background & Overview	7
Chapter 2: Intercept One Alternatives	21
Chapter 3: Intercept Two Alternatives	31
Chapter 4: Intercept Zero Alternatives	47

Executive Summary

The following is a summary of the work regarding Council's Criminal Legal System (CLS) realignment project. Specifically, it addresses (1) the project's background and scope; (2) methodology; (3) a synopsis of my recommendations.

Project Scope

Council adopted [Council Budget Action \(CBA\) 12-22-B-1](#) and [CBA 19-1-B-1](#) as part of the City's 2019 Adopted Budget. These budget actions authorized and funded one term-limited position in the City's Legislative Department and one permanent position in the Office for Civil Rights (OCR) to coordinate institutional and community stakeholder engagement about how the City could realign the municipal CLS. As CBA 19-1-B-1 requested a strategic plan to implement some of the recommendations already provided to the City about the CLS through previous City-sponsored engagements (e.g. Racial Equity Toolkits) and taskforces (e.g. [Seattle Reentry Taskforce](#), [Bail Reform Taskforce](#)), this effort focused on actions that the City could take and does not address practices in the larger CLS outside of the City's purview (i.e. policies instituted at the County, State, or Federal levels). Informed by the [Sequential Intercept Model](#) (SIM) which breaks down the CLS into intercepts corresponding with opportunities for alternative interventions to reduce system-involvement, I specifically looked at potential alternative responses at Intercepts Zero (community services), One (emergency response/police), and Two (pretrial and initial court appearances) that (1) are aligned with previously-given community feedback; (2) could address racial disproportionality in arrests and incarceration; and (3) align the system with evidence-based practices intended to reduce negative outcomes for individuals suspected of having committed a crime while reducing recidivism.

It is important to note that while I am a member of Central Staff, my approach on this project was that of a consultant and deviated from the traditional Central Staff role in that the strategic plan offers recommendations on how to realign the CLS instead of offering non-partisan policy analysis. This shift in focus was by design based on the direction given by the previous Central Staff Director.

Methodology

In line with Council's direction and the Reentry Taskforce's recommendation in its [2018 Final Report](#) to center the experiences of those impacted by the municipal CLS without overburdening those communities, I began developing the strategic plan with a review and analysis of feedback that the City and King County gathered through previous CLS-related community engagement sessions (Racial Equity Toolkits, Human Services Department [Co-Design Report](#), etc.) as well as through a review of community-produced policy and advocacy briefs. This process was responsive to criticism that the City repeatedly asks community members for recommendations and then fails to act on those recommendations. Community leaders advised that this pattern creates community fatigue as community members repeatedly engage with City government without seeing results or actions that reflect community input. I

then compiled recurring themes in those documents into Guiding Principles which served as a foundational document for the rest of my approach on the project. Those principles are:

- The City should engage directly impacted communities on a consistent basis and involve them in the decision-making and solutions. It should also partner with directly impacted communities and community-based organizations to ensure accountability and cultural competence. CLS reform/realignment should lead with a race and social justice equity lens. It should also honor human dignity.
- Reform/realignment efforts should honor and acknowledge community's history of organizing for change.
- The Seattle Police Department should improve its relationship with historically under resourced communities through an increase in positive interactions.
- The City should reduce unequal and disparate treatment faced by Black, Indigenous, People of Color (BIPOC) communities in the criminal legal system.
- The City should compassionately and competently engage with vulnerable members of the community experiencing homelessness and mental illness.
- There should be alternatives to a formal law enforcement presence that community can rely on that decrease surveillance and emphasize de-escalation, mediation and treatment, i.e. Community Service Officers (CSOs), alternatives to 911, and other avenues for resolution without legal entanglement.
- The City should increase opportunities for diversion, decriminalization, and alternatives to arrest to reduce the use of jail as well as surveillance through the probation system.
- The City should reduce incarceration by renegotiating and seeking to eliminate the jail bed "floor" in its contract with the King County jail.
- CLS reform should incorporate opportunities for restorative justice practices.
- The City should examine the root causes of why people are in jail and shift resources to address those needs.
- The City should acknowledge that involvement in the CLS (overall and not specifically the City's municipal system) is often preceded by a variety of social factors including homelessness, child protection services (CPS) intervention, and poverty among other risk factors. Therefore, CLS reform should also include interventions in expanding access to [economic] resources and social services for vulnerable communities.

From there, the strategic plan design process took two separate tracks: Track One consisted of research into theories on the causes of crime as well as best practices and expert recommendations on creating effective alternatives to the traditional CLS that were in line with the Guiding Principles. Track Two centered on generating updated community-produced recommendations through the formation of a community taskforce (in partnership with the Seattle Office for Civil Rights). The taskforce was comprised of nine individuals from historically under resourced communities who either (a) had direct lived experience with incarceration or probation or (b) supported family or community members through incarceration. In addition to generating a set of updated community recommendations based on taskforce members' lived

experience, OCR and I had an additional goal of building community knowledge of how the CLS operates.

Track One recommendations center the Risk-Need-Responsivity (RNR) model which is rooted in behavioral psychology and whose principles have been highlighted by entities such as the United States' Department of Justice, the National Center for State Courts, and the Crime & Justice Center as effective recommendations for implementing evidence-based practices that can reduce recidivism (by 35 percent).¹ The model is concerned with addressing the causes of crime through reduction of criminogenic needs (unmet needs that can increase an individual's propensity to engage in criminal law violations) and is comprised of three main principles:

- Risk Principle – The risk principle states that services and interventions should be matched to an individual's risk to reoffend and that intensive services should be reserved for individuals who are at the highest risk for recidivating.
- Need Principle – The need principle states that interventions should focus on addressing criminogenic needs (e.g. current unemployment, housing insecurity, etc.).
- Responsivity Principle – The responsivity principle states that interventions should employ behavioral, social learning and cognitive behavioral influence and skill building strategies (General Responsivity). They should also be delivered in a way that is responsive to clients' learning styles (Specific Responsivity). This includes, "building on strengths; reducing personal and situational barriers to full participation in treatment; establishing high-quality relationships; delivering early and often on matters of personal interest; and starting where the person is at."

According to the research, risk and needs can be determined through the use of a validated assessment instrument that evaluates eight different factors:

- Previous conviction history;
- History of gang involvement (antisocial associates);
- Endorsement of attitudes supporting violence/manipulation (Antisocial behavior/Personality pattern);
- Problems in familial/intimate relationships (poor relationship quality with little mutual caring or respect);
- Lack of high school degree/GED;
- Current unemployment;
- Substance use disorder;
- Homelessness/housing insecurity (not traditionally a factor in the RNR model, but the Center for Court Innovation found that it should be included for the misdemeanor population).²

¹ Andrews, D.A. & Bonta, James, "Risk-need-responsivity model for offender assessment and rehabilitation 2007," *Public Safety Canada*, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rsk-nd-rspnsvty/index-en.aspx>

² Rempel, Michael et al. "Understanding Risk and Needs in the Misdemeanor Population: A Case Study in New York City, *The Center for Court Innovation*, May 2018.

Track Two recommendations were generated by the taskforce members through 24 weekly sessions organized by OCR and myself; and facilitated by David Heppard from the [Freedom Project](#). During that time, taskforce members met virtually with members from community-based organizations such as Decriminalize Seattle, King County Equity Now, and Northwest Community Bail Fund to learn about those organizations' work and ideas on alternatives to the CLS. They also met with representatives from social service providers serving CLS-involved clients as well as staff from City institutions including the Community Police Commission (CPC), the City Attorney's Office (CAO), and the Seattle Municipal Court (SMC). OCR and I assumed a support staff role and compiled the taskforce's recommendations into a slide deck (see attached) that the taskforce members presented to SMC and CAO leadership as well as to Councilmembers Herbold and Morales. The contracted facilitation team in conjunction with OCR staff will produce the taskforce's report, which is expected to be completed in late May and will be included in my final report. While there are points of overlap between both tracks' recommendations, such as ending pretrial detention, expanding 911 alternative responses, and allocating funding toward preventative measures to reduce the likelihood of CLS involvement, there are differences in approaches on implementation steps and the scope of the City's involvement in relying on existing institutions to address criminal violations. In particular, some taskforce members disagree with introducing risk/need assessment tools. This and other differences will be noted in the taskforce's final report.

Overview of Track One Recommendations

The RNR model provides an evidence-based understanding of the risk/need factors that can precipitate an individual's continued involvement with the CLS. As criminogenic needs are dynamic, the City's responses at each intercept in the CLS can positively or negatively impact those needs. Through the use of public health principles that incorporate this information, the City can reduce the CLS' harm while envisioning an evidence-based public safety model that is rooted in prevention, treatment, and support instead of punitive responses. Public health approaches aim to provide the maximum benefit for the largest number of people and programs based on public health approaches are designed to expose a broad segment of a population to prevention measures by addressing the causes of the health problem. Specifically, Track One recommendations are that the City consider the following investments and policy changes. Clearly, the City will need to evaluate these recommendations in the context of limited funds to determine which investments can be prioritized for near-term implementation:

- Increase its investments in non-police 911 alternatives, including but not limited to interventions such as the Seattle Fire Department's Health One program. It should also update its emergency dispatch protocols to expand the use of alternative responses.
- Change City laws and policing practices such that the Seattle Police Department (SPD) employs alternatives (such as issuing summonses) to arrests for misdemeanor crimes except for specific circumstances such as those crimes where State law mandates arrests (Domestic violence and Driving Under the Influence - DUI).

- Establish and fund new programs that:
 - promote community-based pretrial release; and
 - eliminate the burden of cash bail on economically disadvantaged individuals in the pre-trial stage.
- Expand diversion alternatives, preferably at the pre-filing stage to reduce some of the costs associated with criminal trials (e.g. CAO and SMC staffing) and eliminate the creation of criminal records. By employing validated risk/need assessments at the pre-filing stage (by either the CAO or a community-based contracted partner) to match individuals with an appropriate level and type of support, the City can reduce recidivism and incarceration by addressing criminogenic needs.
- Increase funding in social services that can reduce criminogenic needs to bring diversion programs to scale and make diversion in lieu of prosecution the City's primary response to misdemeanor law violations.
- Continue negotiations with King County on amending the jail contract to reduce spending on jail services over time as the City implements reductions in arrests, pretrial detention, and punitive post-trial incarceration.
- Reinvest any savings from reduced jail and court use in historically under-resourced communities. In partnership with these communities through a participatory budgeting process, the City should focus its investments in programs that can reduce criminogenic needs and adverse childhood experiences (ACEs). This includes childcare, health and mental health services, employment services, early education and family support programs, affordable housing, etc.

Chapter 1: Criminal Legal System Strategic Plan Background & Overview

Background

In the past several years, Council has asked Central Staff and the Executive to examine and implement a number of initiatives spanning the range of the criminal legal system (CLS) and its interaction with and impacts on communities. For example, in 2015, Council passed the Zero Youth Detention Resolution ([Resolution 31614](#) sponsored by former Councilmember Mike O'Brien) endorsing a vision that Seattle become a city that eliminates the need for youth incarceration; and in 2017, Council unanimously passed a police accountability law ([Ordinance 125315](#)) that created, "an integrated structure of community input and civilian oversight through a new Office of Inspector General (OIG), a strengthened Office of Police Accountability (OPA), and a permanent Community Police Commission (CPC),"³ which had been a temporary body created by the City's Consent Decree with the Department of Justice (DOJ).

More recently, Council repealed prostitution and drug loitering laws as was recommended by the City's Reentry Workgroup's [Final Report](#) and set aside \$28 million in the 2021 Adopted Budget for participatory budgeting to fund community priorities and an additional \$30 million for community safety investments that will be informed by recommendations from the Equitable Communities Initiative Task Force. Mayoral administrations, the City Attorney's Office (CAO) and the Seattle Municipal Court (SMC) have also sought to reform the CLS through various initiatives including youth violence prevention programs and both pre-filing and post-filing diversion programs.

While Breonna Taylor and George Floyd's homicides at the hands of the Louisville and Minneapolis police officers were a catalyst for nationwide demonstrations against police brutality, historically under resourced communities in Seattle have been demanding government action against racial disproportionality and inequities in the CLS for many years. In the past decade alone, organizing by these communities following SPD's unjustified fatal shooting of [Nuu-chah-nulth First Nations](#) woodcarver, John T. Williams, has led to recognition by the City and the DOJ that SPD engaged in "a pattern or practice of constitutional violations regarding the use of force that result from structural problems, as well as serious concerns about biased policing."⁴ Further community mobilization over CLS issues revolved around halting the construction of King County's new youth detention center, halting the construction of a new SPD North Precinct, reducing the size of the SMC's probation program, and most recently reducing the size of SPD's budget to invest in community support programs.

³ American Civil Liberties Union of Washington, "Timeline of Seattle Police Accountability," <https://www.aclu-wa.org/pages/timeline-seattle-police-accountability>

⁴ United States Department of Justice, "Investigation of the Seattle Police Department," https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf

What is the problem?

While the City has made advances in reshaping the municipal CLS, Central Staff advised Council in a 2018 Budget Issue memorandum that “the City does not currently coordinate across departments to set and align overall policy, outcomes, and investments or direct that a coordinating body vet all initiatives regarding the criminal legal system to ensure alignment...[and] there does not appear to be a coordinated approach to involve and not overburden communities most impacted by the criminal legal system to inform policy, outcomes, or investments.” Additionally, the Reentry Workgroup (created through [Resolution 31637](#) sponsored by former Council President Bruce Harrell) recommended that the City’s independently elected branches, “work closely to build a coherent strategy; one that is coordinated and aligned with identifiable values and objectives developed in partnership with communities that have been most impacted by the criminal legal system.”⁵

In response to this and advocacy from the Budget for Justice (BfJ) coalition around cutting SMC’s probation funding during the fall of 2018, Council adopted [Council Budget Action \(CBA\) 12-22-B-1](#) and [CBA 19-1-B-1](#) as part of the City’s 2019 Adopted Budget. These budget actions authorized and funded complimentary positions in the City’s Legislative Department and the Office for Civil Rights (OCR) to coordinate institutional and community stakeholder engagement to realign the municipal CLS. In terms of the scope and focus of the realignment project, Council President (then-Public Safety Committee Chair) Lorena Gonzalez stated, “As opposed to having the lead agencies being institutions that are rooted and based in the criminal justice system, we’re looking at ways to invest in community-based organizations that are centered in a harm reduction approach for the purposes of making sure that we are meeting the needs of people who might be involved with the criminal justice system that again is rooted in community spaces as opposed to rooted in law enforcement which is fundamentally our prosecutors and our court system.”⁶

What was the approach?

In line with Council’s direction and the Reentry Taskforce’s recommendation in its [2018 Final Report](#) to center the experiences of those impacted by the municipal CLS without overburdening those communities, I began developing the strategic plan with a review and analysis of feedback that the City and King County gathered through previous CLS-related community engagement sessions (Racial Equity Toolkits, Human Services Department [Co-Design Report](#), etc.) as well as through a review of community-produced policy and advocacy briefs. This process was responsive to criticism that the City repeatedly asks community members for recommendations and then fails to act on those recommendations. Community leaders advised that this pattern creates community fatigue as community members repeatedly engage with City government without seeing results or actions that reflect community input.⁷

⁵ Seattle Office for Civil Rights, “Seattle Reentry Workgroup Final Report,” <https://www.seattle.gov/Documents/Departments/CivilRights/Reentry%20Workgroup%20Final%20Report.pdf>

⁶ Seattle City Council Select Budget Committee Meeting, 9/27/2019 (OCR budget presentation)

⁷ Alcantara-Thompson, Deann, “Report for Bail Reform Workgroup,” Seattle Office for Civil Rights.

Through the review of previous engagement efforts, I sought to identify previously documented answers to the following questions:

- What does safety look like for you and your community? What should City government's role be in achieving that safety;
- What should accountability look like to the victim or community from the individual who broke the law;
- What should accountability look like from the institutions that make up the CLS;
- What should be the underlying values/principles driving the City's CLS;
- What are ways to minimize the CLS' harm to communities;
- What are short-term and long-term goals that CLS reform efforts should address; and
- How should we measure success or failure in the CLS?

I then compiled recurring themes that were responsive to these questions into Guiding Principles which served as a foundational document for the rest of the project. Those principles are:

- The City should engage directly impacted communities on a consistent basis and involve them in the decision-making and solutions. It should also partner with community and community-based organizations to ensure accountability and cultural competence. CLS reform should lead with a race and social justice equity lens. It must also honor human dignity.
- Reform efforts should honor and acknowledge community's history of organizing for change.
- The Police Department should improve its relationship with communities through an increase in positive interactions.
- The City should reduce unequal and disparate treatment in the CLS.
- The City should compassionately and competently engage with vulnerable members of the community experiencing homelessness and mental illness.
- There should be alternatives to a formal law enforcement presence that community can rely on that decrease surveillance and emphasize de-escalation, mediation and treatment, i.e. Community Service Officers (CSOs), alternatives to 911 and other avenues for resolution without legal entanglement.
- The City should increase opportunities for diversion, decriminalization, and alternatives to arrest to reduce the use of jail as well as surveillance through the probation system.
- The City should renegotiate the jail bed "floor" in its contract with the King County jail.
- CLS reform should incorporate opportunities for restorative justice practices.
- The City should examine the root causes of why people are in jail and shift resources to address those needs.
- The City should acknowledge that involvement in the CLS is preceded by a variety of social factors including homelessness, CPS intervention, racist discipline against youth of

color, lack of resources, and poverty among other risk factors. Therefore, CLS reform must also include actionable interventions in expanding access to resources for vulnerable communities.

From there, the project bifurcated into two separate tracks. Track One consisted of research into theories on the causes of crime as well as best practices and expert recommendations on creating effective alternatives to the traditional CLS that were in line with the Guiding Principles. Track Two centered on generating updated community-produced recommendations through the formation of a community taskforce (in partnership with the Seattle Office for Civil Rights).

The taskforce was comprised of nine individuals from historically under resourced communities who either (a) had direct lived experience with incarceration or probation or (b) supported family or community members through incarceration. In addition to generating a set of updated community recommendations based on taskforce members' lived experience, OCR and I had an additional goal of building community knowledge of how the CLS operates. Through 24 weekly sessions facilitated by David Heppard from the [Freedom Project](#), taskforce members met virtually with members from community-based organizations such as Decriminalize Seattle, King County Equity Now, and Northwest Community Bail Fund to learn about those organizations' work and ideas on alternatives to the CLS. They also met with representatives from social service providers serving CLS-involved clients as well as staff from City institutions including the CPC, the CAO, and the SMC. OCR and I assumed a support staff role and compiled the taskforce's recommendations into a slide deck (see attached) that the taskforce members presented to SMC and CAO leadership as well as to Councilmembers Herbold and Morales.

The contracted facilitation team in conjunction with OCR staff will produce the taskforce's report, which is expected to be completed in late May. While there are points of overlap between both tracks' recommendations, such as ending pretrial detention, expanding 911 alternative responses, and allocating funding toward preventative measures to reduce the likelihood of CLS involvement, there are differences in approaches on implementation steps and the scope of the City's involvement in relying on existing institutions to address criminal violations. In particular, some taskforce members disagree with introducing risk/need assessment tools. This and other differences will be noted in the taskforce's final report.

What is the City's CLS?

As Council directed that this project focus on realigning the City's CLS instead reforming it, this section will review the system as it currently exists, look at its philosophical underpinnings, and evaluate whether current practices are in line with current research on furthering public safety goals.

Through the CLS, all three independently elected branches of government are involved in maintaining public safety. While an individual's initial experience with the City's CLS may come

through contact with an SPD officer over the course of an arrest, the officer's decision to carry out the arrest is predicated on establishing probable cause that the suspect committed a misdemeanor or gross misdemeanor (more serious crimes such as murder or armed robbery are felonies) in violation of the City's criminal code ([Title 12A](#) of the City's Municipal Code). The Municipal Code reflects state level statutes ([RCW Title 9A](#)) enacted by the State Legislature as well as ordinances passed by City Council. It also prescribes penalties for violating the criminal code.

If an SPD officer conducts an arrest, the person suspected of committing the crime is typically booked into the King County Jail and SPD refers the matter to the CAO for possible prosecution if it is a misdemeanor or gross misdemeanor. Felony matters are referred to the King County Prosecuting Attorney's Office (KCPAO) as are non-driving offenses involving juveniles. Following SPD's referral, prosecutors from the CAO's criminal division evaluate the case and based on the presented circumstances, decide whether to file charges, decline prosecution, or refer the individual for diversion. In situations where CAO decides to prosecute, the individual suspected of committing the crime is brought before SMC judges who review whether probable cause exists to proceed to trial and if so, set bail and pretrial release conditions, adjudicate the matter, and upon a finding of guilt by a jury or the judge, impose a sentence within the range of penalties in the Municipal Code. Lastly, SMC also operates the City's Programs and Services Division (probation services) which supervises SMC-sentenced individuals by monitoring compliance with court-issued conditions and provides connections to social services.

In evaluating the City's CLS, one of the central recurring questions was – what are the goals that the CLS, as it has been organized, is attempting to achieve. According to the section [12A.02.040](#) in the Municipal Code, the purpose of the City's criminal code is to:

- To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests;
- To safeguard conduct that is without culpability from condemnation as criminal; and
- To give fair warning of the nature of the conduct declared to constitute an offense.

Similarly, as part of its mission statement, the CAO's criminal division's [website](#), states that it works to:

- Ensure respect for and compliance with criminal municipal ordinances by holding offenders accountable through fair and effective prosecution and enforcement.

The central themes in both of these documents is that these City institutions are striving to prevent crime and increase public safety by holding suspected lawbreakers accountable through publication of prohibited conduct and potential punishments as well as prosecution which can lead to imposition of the prescribed punishment. While CAO can use prosecutorial discretion to offer individuals non-punitive diversion options, the threat of punishment for non-compliance remains a central tenet in the way the system operates as under [state law](#), a conviction for a misdemeanor can result in a fine of up to \$1,000 and/or imprisonment for up

to 90 days. Conviction for a gross misdemeanor can result in a fine of up to \$5,000 and/or imprisonment for up to 364 days.

The City's reliance on punishment and the threat of punishment is common to the CLS in the United States. Indeed, the DOJ's National Institute of Justice identifies punishment and incapacitation through incarceration as "a linchpin of United States sentencing policy."⁸ If the City is to take a critical look at its CLS, it is important to review what the theoretical purpose of punishment is and whether reliance on punishment is an effective method of promoting public safety.

What are the objectives of punishment in the CLS?

According to criminal justice theory, the traditional objectives of criminal punishment are retribution, deterrence, incapacitation, and rehabilitation.⁹ This section provides a brief overview of each of these and evaluates them against Community's Guiding Principles and research.

Retribution is defined as the desire to punish law violators for their transgression; and it "operates on a consensus model of society where the community, acting through a legal system of rules, acts 'rightly,' and the criminal acts 'wrongly'."¹⁰ As the transgression of societal norms and expectations is central to the theory of punishment as retribution, it does not generally concern itself with evaluating whether punishment is effective in reducing crime nor does it take into consideration societal causes of crime or whether an individual's circumstances in regard to poverty or mental illness may have contributed to their committing the crime. Society and lawmakers, as its representatives in a democratic republic, may decide that punishment as retaliation has a place in the felony system for more serious crimes. This may be particularly true in regard to violent crimes against persons, such as in cases of rape and murder. For misdemeanor-level crimes, however, City Council has emphasized centering the experiences of historically under resourced communities and through the Guiding Principles document, community has espoused values antithetical to the idea of retribution as a driving force in the City's CLS. Rather than retribution, community has asked that the City, "acknowledge that involvement in the CLS is preceded by a variety of social factors including homelessness, CPS intervention, racist discipline against youth of color, lack of resources, and poverty among other risk factors." Community has also asked that the City "compassionately and competently engage with vulnerable members of the community experiencing homelessness and mental illness."

Deterrence as an objective of punishment is predicated on the idea that aversion to possible punitive consequences will deter individuals from committing crimes. It supposes that individuals will make a rational choice that the consequences of breaking the law will outweigh

⁸ National Institute of Justice, "Five Things About Deterrence," <https://nij.ojp.gov/topics/articles/five-things-about-deterrence#addenda>

⁹ Banks, Cyndi, "Criminal Justice Ethics: Theory and Practice," Sage Publishing, January 2019

¹⁰ Ibid.

any perceived benefits from their crime. Research, however, does not show that it is generally effective, as “there exists no scientific basis for expecting that a deterrence policy, which does not involve an unacceptable interference with human rights, will do anything to control the crime rate.”¹¹ One of the major problems with deterrence is that the certainty of being caught has a greater impact on reducing crime than the severity of punishment.¹² In order to ensure that individuals are caught, however, deterrence-based public safety often relies on increased surveillance and policies such as broken windows and order-maintenance policing (OMP). These practices were implemented in New York City during Mayor Giuliani’s administration; and an evaluation of those practices by the United States Commission on Civil Rights cited research that this type of surveillance disproportionately impacted historically under resourced communities with residents stating that, “they feel they are being watched when they wake up and see police in their courtyards; they see police in their hallways at school; and they are constantly alerted to the NYPD’s presence through police standing on street corners.”¹³

Relying on punishment as deterrence in the misdemeanor system also ignores that for crimes of poverty, an individual’s immediate need may outweigh any threat of punishment. An April 2019 NPR/KUOW article about thefts at Seattle-area Goodwill stores highlights some of these incidences where homeless individuals were arrested, prosecuted, and in some cases jailed for shoplifting items necessary for their survival. For example, a homeless man spent 19 days in jail for stealing t-shirts, socks, and headphones which had a combined value of \$36.99. In another example, a 47-year-old man was caught attempting to steal a sweatshirt, a shirt, and a pair of sweatpants totaling \$29.97. “When the Goodwill loss prevention officer caught him and asked why he took the clothes, the man said he was homeless – he needed them.”¹⁴

Incapacitation is another reason for why the CLS inflicts punishment. Incarceration, whether through jail (county facility holding people sentenced to under 365 days) or prison (state facility for those sentenced to over 365 days), isolates the law violator from society and largely eliminates the possibility that they can commit additional crimes during their period of detention. Traditional probation practices can also serve a similar purpose. While the individual on probation has a greater degree of liberty in comparison to an incarcerated individual, probation conditions and their enforcement through supervision are intended to restrict or incapacitate the individual from the opportunity to commit crime.

As with the previously mentioned theories underlying punishment, incapacitation has a weak connection to increasing public safety and reducing crime. In an “evidence brief,” addressing incarceration, the Vera Institute of Justice wrote “Although studies differ somewhat, most of the literature shows that between 1980 and 2000, each 10 percent increase in incarceration

¹¹ Ibid.

¹² National Institute of Justice, “Five Things About Deterrence,” <https://nij.ojp.gov/topics/articles/five-things-about-deterrence#addenda>

¹³ United States Commission on Civil Rights, “The Civil Rights Implications of ‘Broken Windows’ Policing in NYC and General NYPD Accountability to the Public, March 2018, <https://www.usccr.gov/pubs/2018/03-22-NYSAC.pdf>

¹⁴ Brownstone, Sydney, “A homeless man steals clothes from a Seattle Goodwill, goes to jail. His story isn’t unusual,” April 17, 2019, <https://www.kuow.org/stories/a-homeless-man-steals-clothes-from-a-seattle-goodwill-goes-to-jail-his-story-isn-t-unusual>

rates was associated with just a 2 to 4 percent lower crime rate...[and that since 2000], the increased use of incarceration accounted for nearly zero percent of the overall reduction in crime.”¹⁵

As is the case with retribution, incapacitation does not concern itself with addressing the causes of crime and thus fails as a future-looking public safety strategy since there is no evidence-based function to prevent reoffending. While there is an undeniable logic that incapacitation limits individuals’ ability to commit additional crimes throughout their period of incapacitation, reliance on this view as a justification for punishment ignores that 100 percent of people will be released from the City’s misdemeanor system and that in many cases, research demonstrates that they will release in a worse condition than when they entered with a higher likelihood of recidivating. This is particularly true in regard to incapacitation through incarceration which destabilizes an incarcerated individual’s beneficial connections through separation from prosocial support systems such as family, housing, and employment. A more in-depth discussion about incarceration’s harm is contained in a latter section on the Risk-Needs-Responsivity model.

Additionally, incarceration often has a negative effect on the families and communities of those held in custody. Prior to their incarceration, the individual may have provided financial or non-financial support such as child or elder care. Losing this support can further destabilize the individual’s family; and there is strong evidence that having an incarcerated parent is particularly harmful to children. Having an incarcerated parent has been linked to elevated levels of aggression, depression, and anxiety and “children’s well-being can be affected through multiple pathways, including reduced economic resources, traumatic removal of the family member, and stigmatization.”¹⁶ Research also shows that incarceration’s harmful effects impact community members outside of the incarcerated individual’s family. In a 2015 article published in the *American Journal of Public Health*, researchers found that after controlling for - neighborhood and individual-level factors, people living in areas with a high prison incarceration rate were found to have a higher likelihood of meeting diagnostic criteria for Major Depressive Disorder and Generalized Anxiety Disorder.¹⁷

Rehabilitation, the final theory underlying punishment, is based on the notion that the government can, “apply treatment and training to the offender so that he is made capable of returning to society and functioning as a law-abiding member of the community.”¹⁸ Unlike the

¹⁵ Steman, Don, “The Prison Paradox: More Incarceration Will Not Make Us Safer,” *Vera Institute of Justice*, July 2017, https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf

¹⁶ Gjelsvik, Annie et al. “Adverse childhood events: incarceration of household members and health-related quality of life in adulthood.” *Journal of health care for the poor and underserved* vol. 25,3 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4897769/>

¹⁷ Hatzenbuehler, Mark L et al. “The Collateral Damage of Mass Incarceration: Risk of Psychiatric Morbidity Among Nonincarcerated Residents of High-Incarceration Neighborhoods.” *American Journal of Public Health* vol. 105,1 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4265900/>

¹⁸ Clarke, Donald C. et al. "Punishment". *Encyclopedia Britannica*, 14 Mar. 2016, <https://www.britannica.com/topic/punishment>

other theories discussed above, rehabilitation does concern itself with attempting to help the person who violated the law. As it is practiced, however, rehabilitation is often used as a justification for incapacitation through incarceration or probation. For example, in [RCW 9.94.049](#), the state legislature defined correctional institutions as facilities such as prisons and jails operated, “primarily for the purposes of punishment, correction, or rehabilitation following conviction of a criminal offense.” Used in this context, rehabilitation creates analogous harm to that caused by incapacitation as it also removes an individual from prosocial support systems. Rehabilitation that relies on incapacitation is also counter to Community’s Guiding Principles as community members have repeatedly voiced that, “the City must increase opportunities for diversion, decriminalization and alternatives to arrest to reduce the use of jail as well as surveillance through the probation system.”

In their conclusion to the article, “Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science,” the authors present a scenario that is relevant to this discussion concerning the City’s current practices in the CLS:

Imagine a medical system in which very sick and mildly sick patients are hospitalized with virtually no idea of whether they will emerge cured, terminally ill, or unchanged. Theories abound, however. On one side, we have those arguing that hospitals make patients less ill than if left in the community. On the other side, we have those arguing that hospitals expose patients to disease risk factors...

Those institutionalizing sick patients claim that they have a “gut-level feeling” that hospitalization has curative effects. After all, they know a bunch of patients who reentered the community and did not get sick again. They do not need to consult any scientific studies to know that hospitals reduce repeated illness. If this situation were to occur, the public would call those in the medical profession quacks, file endless lawsuits for malpractice, and demand studies to prove which interventions were safe or unsafe. But if we were to substitute the word ‘imprisonment’ for ‘hospitalization’ in the previous paragraph, we would be roughly describing the current use of prisons and of correctional policy.¹⁹

Although the authors were writing about the felony system, much of their observation holds true for the City’s misdemeanor system. Contrary to the “gut-level” [assertions](#) that the City has a prolific offender problem because it is charging too few people, policy makers should instead look toward evidence-based models that address the causes of crime. The City may have inherited a legacy CLS, but research provides a roadmap to a more effective, less harmful alternative that is more in line with its values.

¹⁹ Cullen, Francis T., et al. “Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science.” *The Prison Journal*, vol. 91, no. 3_suppl, Sept. 2011, pp. 48S-65S

If punishment does not work to reduce crime, then what does?

The Risk-Need-Responsivity (RNR) model is one of the most influential models for the assessment and treatment of individuals who have violated the law.²⁰ RNR was developed by Canadian psychologists/criminologists and has been extensively studied in Canada and the United States. The model is rooted in behavioral psychology and entities such as the United States' DOJ, the National Center for State Courts, and the Crime & Justice Center have highlighted RNR principles within their recommendations for implementing evidence-based practices to reduce recidivism.²¹

RNR is concerned with addressing the causes of crime through reduction of criminogenic (likely to cause criminal behavior) needs and is comprised of three main principles.

- Risk Principle – The risk principle states that services and interventions should be matched to an individual's risk to reoffend and that intensive services should be reserved for individuals who are at the highest risk for recidivating.
- Need Principle – The need principle states that interventions should focus on addressing criminogenic needs.
- Responsivity Principle – The responsivity principle states that interventions should employ behavioral, social learning and cognitive behavioral influence and skill building strategies (General Responsivity). They should also be delivered in a way that is responsive to clients' learning styles (Specific Responsivity). This includes, "building on strengths; reducing personal and situational barriers to full participation in treatment; establishing high-quality relationships; delivering early and often on matters of personal interest; and starting where the person is at."²²

According to traditional RNR, there are eight core criminogenic needs/risks that increase an individual's propensity for further involvement in the CLS. Previous criminal history is the only static factor while the rest are dynamic. By targeting the dynamic factors, RNR not only reduces recidivism but also aligns with Community's Guiding Principles by addressing the root causes of why individuals are in jail and shifting resources to address those needs.

It is important to note at this point in the discussion that the King County Department of Public Defense (DPD) and anti-racist community activists have expressed [concern over the use of risk assessments](#), particularly in regard to their use by judges during the bail stage to determine bail amounts or release conditions based on risk levels to reoffend and past failures to appear in court. Given that communities of color experience systemic racism and overpolicing leading to [disproportionate involvement in the CLS](#), there is validity to these concerns as risk in the context of pretrial risk assessments is largely determined by an individual's criminal record and

²⁰ Andrews, D.A. & Bonta, James, "Risk-need-responsivity model for offender assessment and rehabilitation 2007-06," *Public Safety Canada*, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rsk-nd-rspnsvty/index-en.aspx>

²¹ Warren, Roger K., "Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries," *Crime and Justice Institute*, August 2007, <https://info.nicic.gov/nicrp/system/files/023358.pdf>

²² Andrews, D.A. & Bonta, J., *The Psychology of Criminal Conduct – 5th ed.*, Routledge, 2010

history of missing court dates. This can lead to individuals from Black, Indigenous, and People of Color (BIPOC) communities being overrepresented in pretrial incarceration.

While RNR and RNR-based risk assessments do incorporate criminal history as a static factor in evaluating risk/need levels, it is one of various factors that these assessments use. Moreover, unlike the pretrial risk assessments, RNR-based risk/needs assessments would not be used to determine who should be incarcerated but rather the level and types of services offered in lieu of prosecution. In their core principles of RNR, the authors make this point by highlighting that cognitive behavioral therapy (CBT) and human services are more effective than correctional sanctions in reducing recidivism and that “the typical legal and judicial principles of deterrence, restoration, just desert, and due process have little to do with the major risk/need factors... [I]t is through human, clinical, and social services that the major causes of crime may be addressed.”²³ The authors also note that treatment is more effective in a community setting than in a carceral one. In terms of RNR’s effectiveness in reducing future CLS involvement, “the available data indicate that if there is a response to just one of the individual’s criminogenic needs, recidivism can be lowered. If there is a response to at least three, recidivism can be lowered substantially (up to 35 percent).”²⁴

Within the United States, implementation of the RNR model has been principally focused on the felony system where it is used to design rehabilitative programming for incarcerated individuals as well as those under probation supervision. The Center for Court Innovation (CCI), however, conducted [research](#) on New York’s misdemeanor population and adapted it to the misdemeanor cohort. While there was overlap in assessed risks/needs between individuals involved in the felony system and individuals in the misdemeanor system, CCI found that there was some variation with the strongest predictors for misdemeanor crime being:

- History of gang involvement (antisocial associates)
- Endorsement of attitudes supporting violence/manipulation (Antisocial behavior/Personality pattern)
- Problems in familial/intimate relationships (poor relationship quality with little mutual caring or respect)
- Lack of high school degree/GED
- Current unemployment
- Substance use disorder
- Homelessness/housing insecurity (not traditionally a factor in the RNR model but CCI found that it should be included for the misdemeanor population)²⁵

²³ Ibid.

²⁴ Adults with Behavioral Health Needs Under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery, The Council of State Government, 2012

²⁵ Rempel, Michael et al. “Understanding Risk and Needs in the Misdemeanor Population: A Case Study in New York City, *The Center for Court Innovation*, May 2018.

Neither the original RNR model nor CCI's misdemeanor adaptation found that mental illness is a criminogenic risk. However, both state that untreated mental illnesses can affect an individual's responsiveness to interventions targeting criminogenic needs and for that reason, it should be addressed as part of the specific responsivity principle.

Aside from providing guidance as to what interventions work to reduce CLS involvement, the RNR model also offers an indictment of the traditional CLS. Since criminogenic risk factors are dynamic, a person's risk of recidivism may be increased if their access to housing, employment, and prosocial relationships are negatively impacted through incarceration or other punitive measures. Indeed, a study carried out in Kentucky found that during pretrial detention, low and medium risk defendants held for two to three days were more likely to commit new crimes pre-trial and post-adjudication. And if their incarceration went up to eight to 14 days, they were 51 percent more likely to commit crimes 2 years after disposition.²⁶ Similarly, a study reviewing outcomes for misdemeanor pretrial detention in Harris County, TX found that incarceration is "associated with a 30 percent increase in new felony charges and a 20 percent increase in new misdemeanor charges, a finding consistent with other research suggesting that even short-term detention has criminogenic effects."²⁷

The traditional CLS' destabilizing impacts have been noted by SPD's Executive Director of Strategic Initiatives, Dr. Christopher Fisher. In an [article](#) co-authored with Seattle University faculty, Fisher et al. wrote:

Despite the lower-level nature of misdemeanors, the negative impact on individuals arrested for misdemeanor crime is far-reaching and can end in punishment more taxing than criminal penalties leading to housing difficulties, lack of stability in employment, financial loss, and deportation. Individuals arrested, referred, and charged for misdemeanors are stigmatized, punished, and burdened in similar ways to those charged for felonies.²⁸

The destabilizing effects created by jail detention were also expressed through the personal experiences of the City's Reentry Workgroup members, with one individual stating that:

In three days, a person's life can be totally uprooted. If you are in jail three days, that's enough time for life to be broken. From loss of income, three days of not showing up to work is a lost job, with any job. It can cause issues with CPS if no one can pick up your kids. It can be the catalyst for homelessness. My god, even just three days. It can increase financial burdens from late fees, if bills or rent aren't paid on time. It can cause a loss of food. Just in three days. A life can be ruined.²⁹

²⁶ Lowenkamp C. et al., "The Hidden Costs of Pretrial Detention," *Laura and John Arnold Foundation*, November 2013.

²⁷ Heaton P. et al., "Downstream Consequences of Misdemeanor Pretrial Detention," *Stanford Law Review*, vol. 69, March 2017

²⁸ Helfgott, Jacqueline B et al, "Crisis-flagged Misdemeanors in Seattle: Arrests, Referrals, Charges, and Case Dispositions," *Criminology, Criminal Justice, Law & Society*, vol. 20, no. 2, 2019, pp. 59–85

²⁹ Seattle Office for Civil Rights, "Seattle Reentry Workgroup Final Report,"

<https://www.seattle.gov/Documents/Departments/CivilRights/Reentry%20Workgroup%20Final%20Report.pdf>

Implementing RNR through Public Health Principles

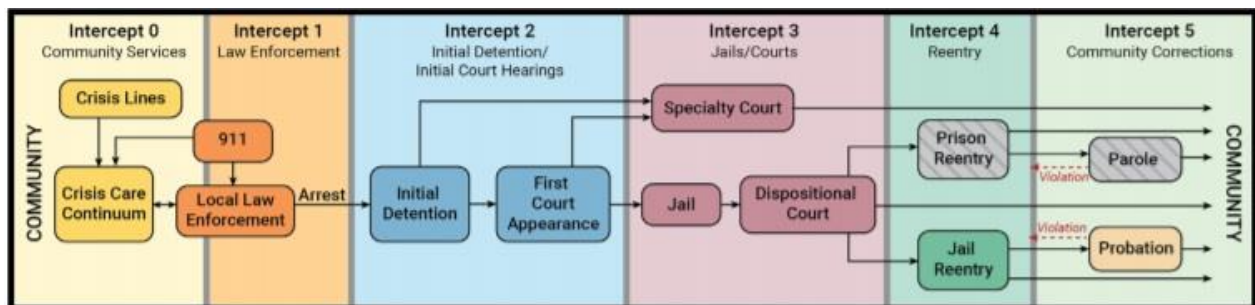
The RNR model provides a clearer understanding of the risk/need factors that can precipitate an individual’s continued involvement with the CLS. By using public health principles that incorporate this information, the City can reduce the CLS’ harm while envisioning an evidence-based public safety model. Public health approaches aim to provide the maximum benefit for the largest number of people and programs based on this approach are designed to expose a broad segment of a population to prevention measures by addressing the causes of the health problem.

In adapting the public health model to CLS realignment, the City can look to the World Health Organization’s (WHO) recommended approach in its [Global Campaign for Violence Prevention](#). This consists of four steps:

1. Defining the problem through the systematic collection of information about the magnitude, scope, characteristics, and consequences of violence.
2. Establishing why violence occurs using research to determine the causes, the factors that increase or decrease the risk of violence, and the factors that could be modified through interventions.
3. Finding out what works to prevent violence by designing, implementing, and evaluating interventions.
4. Implementing effective and promising interventions in a wide range of settings. The effects of these interventions on risk factors and the target outcome should be monitored, and their impact and cost-effectiveness should be evaluated.

Given that RNR establishes the factors that can increase or decrease an individual’s propensity to engage in criminal activity and provides guidance on addressing those factors through clinical and social service interventions, the next step is to evaluate where opportunities exist to begin implementing those interventions. The Sequential Intercept Model (SIM) (Figure 1) can help in this endeavor.

Figure 1: Sequential Intercept Model



Source: Policy Research Associates, Inc

The SIM is a conceptual model based on public health principles that provides a visualization of how individuals come into contact with and move through the CLS' different stages. It was originally developed to provide a framework to use when considering the interface between the CLS and the mental health system.³⁰

By breaking the CLS down into six intercepts corresponding to key decision points where interventions could prevent individuals from entering or penetrating deeper into the CLS, the model is intended to help communities, "identify resources and gaps in services at each intercept and develop local strategic action plans,"³¹ in order to further goals such as preventing initial CLS involvement, decreasing jail admissions, and engaging individuals in treatment for the purposes of minimizing the time spent moving through the CLS. Intercepts are intended to function as filters to prevent further penetration into the CLS and "ideally, interventions would be front-loaded to 'intercept' people early in the system."³²

This report relies on Community's Guiding Principles, RNR principles and the SIM's framework to identify current CLS practices that produce unnecessary harm. In the following sections, it makes recommendations for alternative responses in Intercepts 1 and 2 that incorporate evidence-based practices and provides examples of successful reforms undertaken by other jurisdictions within the United States. It concludes with additional recommendations targeted toward Intercept 0 that if implemented, can reduce the initial probability that individuals will become entangled with the CLS. Given the centrality of Community's Guiding Principles in designing the realignment framework, each chapter opens with the Principles relevant to that intercept.

³⁰ Please see <https://store.samhsa.gov/sites/default/files/d7/priv/pep19-sim-brochure.pdf> for a more detailed introduction to the SIM and its intercepts.

³¹ The Sequential Intercept Model (SIM), *Substance Abuse and Mental Health Services Administration (SAMHSA)*, <https://www.samhsa.gov/criminal-juvenile-justice/sim-overview>

³² Willison, Janeen B. et al, "Using the Sequential Intercept Model to Guide Local Reform: An Innovation Fund Case Study," *Urban Institute*, Oct. 2018, https://www.safetyandjusticechallenge.org/wp-content/uploads/2018/10/2018.10.11_Using-the-SIM_finalized.pdf.

Chapter 2: Intercept One Alternatives

Community Guiding Principles responsive to Intercept One:

- SPD should improve its relationship with community through an increase in positive interactions.
- There should be alternatives to a formal law enforcement presence that community can rely on that decrease surveillance and emphasize de-escalation, mediation, and treatment.
- The City should compassionately and competently engage with vulnerable members of the community experiencing homelessness and mental illness.
- The City should increase opportunities for diversion, decriminalization, and alternatives to arrest to reduce the use of jail as well as surveillance through the probation system.

An individual's involvement with the CLS traditionally begins at Intercept One which includes 911 and local law enforcement responses. As the initial point of intersection with the formal system, this intercept also provides the first opportunity to create off-ramps to deeper CLS penetration as well as harm from unnecessary police interactions and jail detention. Given the disproportionate rates of arrest for Indigenous and Black community members, alternative actions at this intercept can also begin to address disproportionate downstream impacts to those communities.

Over the past decade, the City has made significant investments in this intercept such as with the [Community Service Officer](#) program and the City's partnership with King County to fund the [DESC Mobile Crisis Team](#).³³ During the 2020 summer budget rebalancing and the 2021 budget deliberations, the City made additional investments in Intercept One programs. For example, Council [allocated](#) \$50,000 to the Human Services Department (HSD) to contract with a community-based organization to develop recommendations on how to scale a non-police 911 response system similar to the [Crisis Assistance Helping Out On The Streets](#) (CAHOOTS) model in Eugene, OR and the [Support Team Assisted Response](#) (STAR) model in Denver, CO. It also [expanded](#) the Seattle Fire Department's (SFD) [Health One](#) program (originally [proposed](#) in the 2019 budget by then-Budget Chair Sally Bagshaw) from one to three units, appropriated \$1 million to the Human Services Department (HSD) to support the creation/expansion of neighborhood-based [mobile crisis teams](#), and continued its investment in the Community Critical Incident Responders (CCIR) program operated by [Community Passageways](#). Through the CCIR program, trained community-based teams monitor safety in high risk areas and respond to incidents of violence in partnership with local law enforcement.

As the City increases its investments in Intercept One programs and stands up a new [Seattle Emergency Communications Center](#) to answer and triage 911 calls, it should update its dispatch protocols to expand the use of alternative responses such as Health One. Currently, SPD's dispatch completes primary 911 screening and the majority of calls for wellness checks and

³³ See appendix for a Central Staff memo with a comprehensive list of City-funded Intercept One programs

behavioral health (BH) crises are retained by SPD. While SPD has a [Crisis Response Team](#) (CRT) available to respond to BH calls, Health One provides a needed resource for wellness checks and BH calls that does not involve sworn officers as the combination of an armed police response and individuals in the throes of BH crisis can lead to deadly situations. Indeed, an article published in the American Journal of Preventative Medicine analyzed deaths in 17 states due to the use of lethal force by law enforcement and estimates that 25 percent to more than 50 percent of fatal encounters with law enforcement involve individuals with mental illness. Moreover, the same article noted the racial disproportionality in these fatal shootings as Black individuals were, “substantially over-represented relative to the U.S. population, comprising 34 percent of victims but only 13 percent of Americans, and with legal intervention death rates 2.8 times higher than those among whites.”³⁴

A February 2021 article in the South Seattle Emerald, titled “[Who Can We Call?](#)” provides a recent example of the need for alternative 911 responses to BH situations. The author wrote that she encountered an unknown man in her backyard who appeared to exhibit behavioral health issues:

I had my next meeting, but it was by phone so I sat distractedly trying to monitor the situation. I told my colleague what had just happened and that the man was still outside. I definitely didn’t want to call the police, but I wondered who I could call.

My colleague’s husband advised me to call 911 and coached me to ask for a mental health professional. He explained there was a program that got routed through 911 dispatch, but that I could request someone other than police. So I tried that, but the dispatch operator said that an officer would first have to come out to make an assessment before referring a social work intervention. “I don’t want to do that,” I said. “Can’t you just skip that part and call the mental health professional?” The operator reiterated that it didn’t work that way...

In contrast to Seattle, cities such as Eugene, OR dispatch 911 alternatives (CAHOOTS) to respond to wellness checks and non-violent situations with a BH component. According to data published by the White Bird Clinic which operates CAHOOTS, their teams comprised of a medic and a crisis worker with extensive training in BH responded to roughly 24,000 calls in 2019 and police backup was only requested 250 times.³⁵ By continuing to expand Health One-type alternatives and amending the dispatch protocol to route additional calls to them, the City could also see budget savings through the reduced use of police services. Per the City’s contract with the Seattle Police Officers Guild (SPOG), this change would likely require bargaining as SPD owns that body of work.

³⁴ DeGue, Sarah et al, “Deaths Due to Use of Lethal Force by Law Enforcement: Findings from the National Violent Death Reporting System, 17 U.S. States, 2009–2012,” *The American Journal of Preventative Medicine*, vol 51, no 5, November 2016.

³⁵ White Bird Clinic, “CAHOOTS Media Guide 2020,” <https://whitebirdclinic.org/cahoots/>

Currently, Health One is directly dispatched to .03 percent of incoming calls and acts as secondary responders to an additional .06 percent of incoming calls.³⁶ In contrast, CAHOOTS teams answered 17 percent of the Eugene Police Department’s overall call volume in 2017 and the White Bird Clinic reports that the program saved the City of Eugene an estimated \$8.5 million in public safety spending annually.³⁷

In addition to increasing alternatives to armed police responses, the City can address the harm from jail incarceration by reducing the use of arrests in cases where SPD does respond to incidents.

What is the law and current practice regarding arrests?

Under state law ([RCW 10.30.100](#)), repeat driving under the influence (DUI) offenses and certain domestic violence offenses require mandatory arrests. For other crimes, however, officers have discretion on whether to carry out the arrest. This is also reflected in the Seattle Municipal Code ([12A.02.140](#)), which states that SPD officers “may arrest without a warrant if the officer has probable cause to believe that the person committed a crime.” The municipal code also provides officers an alternative to arrest as they are authorized to “serve the arrested person with a citation and notice to appear in municipal court in lieu of continued custody, as provided for by the Rules of Courts of Limited Jurisdiction.”

Under those rules, which are promulgated by the Washington State Administrative Office of the Courts, an officer is asked to consider³⁸:

- Whether the individual has identified themselves satisfactorily;
- Whether detaining the individual is reasonably necessary to prevent imminent bodily harm to themselves or others, injury to property, or breach of the peace;
- Whether the person has sufficiently reasonable ties to the community to assure his or her appearance in court or if there is a substantial likelihood that they will refuse to appear; and
- Whether the individual has failed to appear in court on previous occasions when they have been issued a citation.

If the suspect meets eligibility requirements, they may also be referred to the Law Enforcement Assisted Diversion (LEAD) program which connects the individual with intensive case management and social services (LEAD will be discussed in greater detail in the following chapter).

According to the [SPD manual](#), once an officer has established probable cause, informed the individual of the reason for their arrest, and advised them of their Miranda Rights, they will notify a sergeant and complete an arrest report. Sergeants will then screen the arrest prior to

³⁶ Health One dispatch data was compiled by the City Budget Office (CBO) and shared with Central Staff

³⁷ White Bird Clinic, “CAHOOTS Media Guide 2020,” <https://whitebirdclinic.org/cahoots/>

³⁸ Criminal Rules for Courts of Limited Jurisdiction, “CrRLJ 3.2 - Release of Accused.”

the individual being booked into jail or released.³⁹ As an alternative to arresting and booking when doing so is not legally mandated, the SPD Manual allows for Criminal Citations and the Charge-by-Officer (CBO) program.⁴⁰ The former is reserved for criminal traffic offenses⁴¹, while the latter may be used for most other misdemeanors with the exception of incidents involving juvenile suspects, prostitution-related offenses, sexual exploitation, thefts referred through the Retail Theft Program, or crimes which require follow up by a detective.⁴² If an officer chooses to use either of these options, the report submitted to the sergeant must articulate probable cause and contain sufficient information documenting the suspect's identity such as their name, date of birth, last known address, and physical description. Following approval, the suspect can be released, and the report is forwarded to the CAO for its review and charging decision. In cases where prosecutors decide to file charges, the SMC Court Clerk will issue a mail summons to the defendant's last known address informing them of their first court date.

The Reentry Workgroup's report notes that based on conversations with SPD, there are no written guidelines outlining the situations when non-legally mandated arrests should be carried out. In the absence of such guidelines, arrest decisions are "largely left up to each individual officer's discretion with some oversight, in that each arrest be approved by a supervisor."⁴³ Indeed, neither the criminal citation nor CBO policies in the SPD manual offer guidance on when they should be used.

In 2016, Seattle University released its *Trends in Misdemeanor Arrests, Referrals, and Charges* report which compiled and analyzed data provided by SPD, CAO, and SMC. In line with SPD's arrest data, misdemeanor arrests are categorized into four different enforcement types:

- Arrested (SPD booking)
- Outside agency arrest (e.g. Department of Corrections)
- Summons (order to appear in court issued by SMC when suspect not in custody)
- Citations (issued for misdemeanor moving violations)

As is shown in Figure 2, under current practices, arrests leading to jail bookings accounted for about 50 to 55 percent of SPD enforcement between 2009 and 2016. For that same period, summons were used in about 18 to 26 percent of cases while citations were used in fewer than 10 percent of cases.

³⁹ SPD Manual 6.010 - Arrests

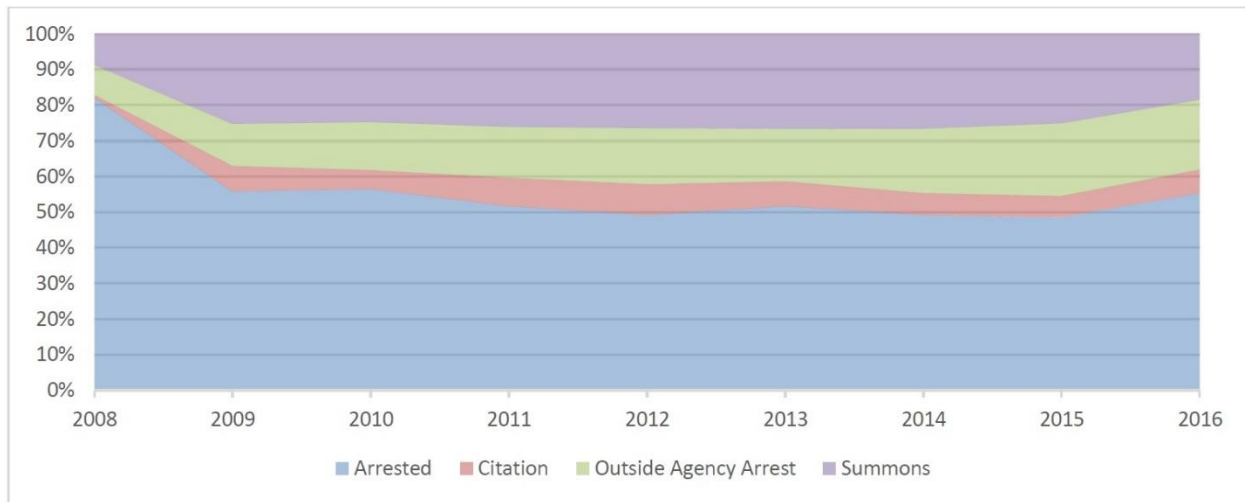
⁴⁰ Please see appendix for SPD's response to [SLI SPD-1-B-1](#) which requested a report of the Department's use of the Charge-by-Officer program.

⁴¹ SPD Manual 16.230 – Issuing Tickets and Traffic Contact Reports

⁴² SPD Manual 15.020 – Charge-By-Officer (CBO)

⁴³ Seattle Office for Civil Rights, "Seattle Reentry Workgroup Final Report," October 2018.

Figure 2: Percent of Total SPD Arrests by Enforcement Type⁴⁴



Expanding the Use of Alternatives to Arrest and Jail booking

CLS reform efforts on the local and national level have begun focusing on expanding alternatives to arrest as a way to reduce harm to individuals and communities. For example, in its [Final Report](#), the Reentry Workgroup recommended that the City increase the use of citations or summons by SPD for nonviolent misdemeanors. The Workgroup stated that there are cases where, “arrests are required by state law and necessary to prevent future violence, [but] there are many times when arrests are not necessary or required but still occur.” As a result, one of the Workgroup’s recommendations was that SPD should develop guidelines to limit arrests for misdemeanor offenses.

At the national level, President Obama’s Task Force on 21st Century Policing recommended that “law enforcement training policies should emphasize de-escalation and alternatives to arrest or summons in situations where appropriate,”⁴⁵ and the International Association of Chiefs of Police (IACP) released a [report](#) in 2016 which reviewed existing literature on the use of arrest alternatives. While recommending further study, it found that existing research supports the conclusions that citations and summons in lieu of arrest can⁴⁶:

- Reduce the burden that individuals face from involvement in the CLS as it bypasses, “many of the hardships associated with arrest and detention, including financial burdens, damage to reputation, and inability to work;
- Reduce jail overcrowding as those accused of non-violent misdemeanor offenses would not be put through the booking and pre-trial detention process;

⁴⁴ Helfgott J.B., Parkin W., Fisher C., & Kaur, S. Trends in Misdemeanor Arrests, Referrals, & Charges in Seattle – Final Report. Seattle University, October 2018.

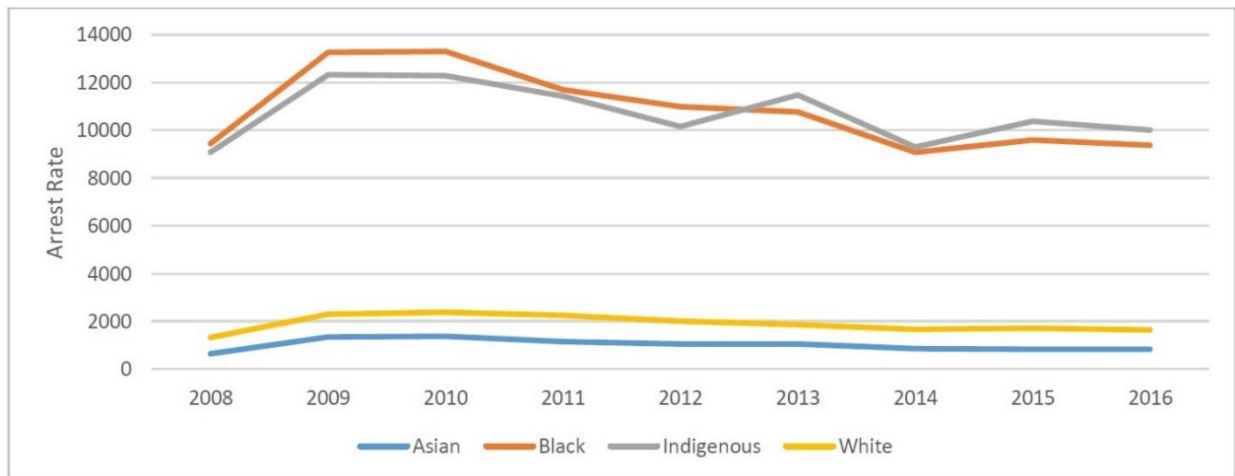
⁴⁵ President’s Task Force on 21st Century Policing, “Final Report of the President’s Task Force on 21st Century Policing,” 2015.

⁴⁶ The International Association of Chiefs of Police, “Citation in Lieu of Arrest: Examining Law Enforcement’s Use of Citation Across the United States,” April 2016.

- Enhance community-police relations since employing arrest alternatives stops the unnecessary removal of individuals from their families and communities; and
- Conserve law enforcement resources to focus on more serious crimes as the citation-issuance process takes 24 minutes on average while an arrest takes 86 minutes.

Employing arrest alternatives can also be a method of reducing the harm that other stages of the CLS inflict on already disproportionately impacted communities. As the entry point into the system, disproportionality created by differences in arrest rates create consequences which percolate through the rest of the system. For example, as Figure 3 shows, there are massive disparities in the misdemeanor arrest rates for Indigenous and Black individuals as compared to Whites and Asians (due to SPD data collection practices at that time, data on Latinx arrest rates are not available). The first two groups have rates of about 10,000 arrests per 100,000 individuals while the latter two have rates of under 2,000 arrests per 100,000 individuals.

Figure 3: SPD Misdemeanor Arrest Rates by Race per 100,000 population, Ages 18-65⁴⁷



As the majority of these arrests lead to jail bookings, a greater share of the Indigenous and Black populations will be subject to pretrial detention before their initial court appearances.

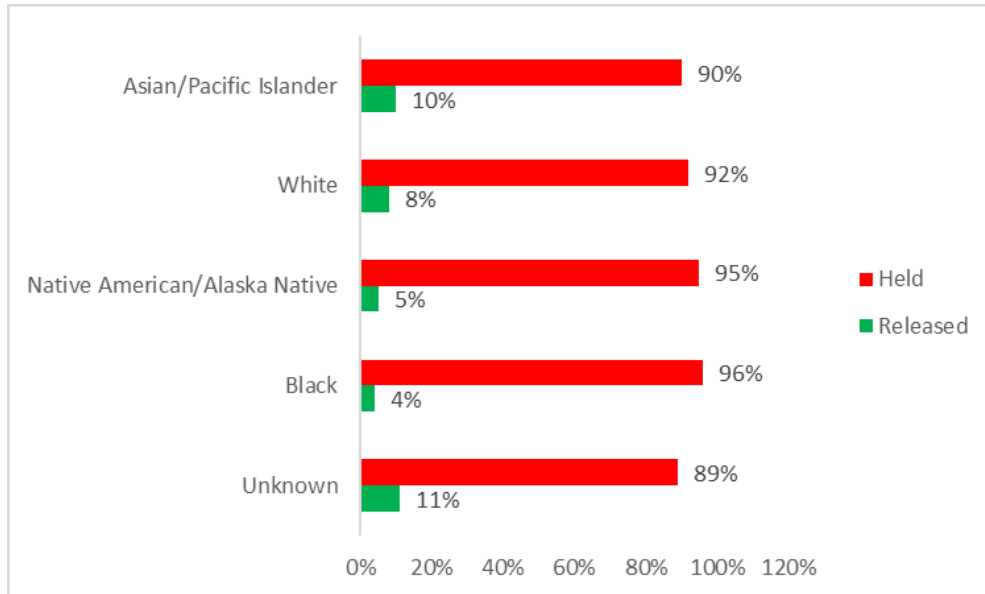
What happens after an arrest?

Following arrest and booking into the King County jail on a misdemeanor crime, individuals meet with personal recognizance (PR) screeners from the SMC. Depending on criteria such as the level of the charge, previous criminal history, history of failing to appear at previous court hearings, and ties to the community, the person may be released on their own recognizance with a promise to appear in court. If they are denied release on PR, individuals who are not charged with a disqualifying offense, such as domestic violence assault, and who have the financial means to do so can post the bail amount set by a predetermined [bail schedule](#). Bail for misdemeanor crimes is generally set at \$500, while gross misdemeanors are set at \$1,000.

⁴⁷ Helfgott J.B., Parkin W., Fisher C., & Kaur, S. Trends in Misdemeanor Arrests, Referrals, & Charges in Seattle – Final Report. Seattle University, October 2018.

According to aggregated data shared by SMC covering 2018 and 2019, 94 percent of individuals booked on misdemeanor charges are not released during the PR screening stage. Compounding the racial disproportionality at the point of arrest, Indigenous and Black individuals had a lower rate of release at this stage when compared with Asian/Pacific Islander and White individuals as they were either not eligible for PR based on the Court’s criteria or were unable to post the default bail amount.

Figure 4: Release Actions at PR Screening Stage by Race⁴⁸



Charged individuals who cannot post the default bail are held in jail until their arraignment which under court rules must happen within 48 hours after booking for in-custody cases. During this initial appearance before an SMC judge, the court determines whether to release the individual with or without conditions such as day reporting or whether to raise/lower the bail amount.

How have other jurisdictions increased the use of citations or summons?

Should Council choose to take action to increase arrest alternatives, the City of New Orleans and New York State provide examples of how to do so through legislative action. In 2008, the New Orleans City Council enacted an [ordinance](#) limiting police discretion in arrests for non-domestic violence violations of the City’s criminal code. Except for circumstances meeting specific criteria, such as if a suspect is acting violently, states their intent to harm themselves, harm other, or damage property, or in situations where an officer determines that an arrest, “is absolutely necessary,” police are expected to issue summonses in lieu of conducting an arrest and booking the suspect into jail. When arrests are made, the law requires that officers provide

⁴⁸ Seattle Municipal Court Research, Planning and Evaluation Group, “Pre-Trial Releases at Seattle Municipal Court,” March 25, 2021.

a written statement on the arrest affidavit detailing why the case met one of the ordinance’s exceptions.

The Vera Institute of Justice partnered with the New Orleans City Council to study the effects of the summons ordinance. In an April 2010 presentation, Vera reported that pre-enactment, New Orleans police officers issued summonses in 24.4 percent of cases while using arrests 75 percent of the time. In October 2009, the use of summons had risen to 31.5 percent of cases while arrests were used 68.5 percent of the time.⁴⁹

Vera’s presentation noted that police officers continued to arrest at high rates for public intoxication cases and attributed this to textual similarities between the summons ordinance and the section of the municipal code criminalizing public intoxication. As stated previously, the former permits arrest in situations where an individual threatens harm to themselves, others, or property. The latter criminalizes being intoxicated to the degree that the individual may endanger themselves, others, or property. Vera projected that this overlap was responsible for public intoxication offenses resulting in arrest 93 percent of the time. Given the high arrest rate for this specific crime, Vera’s analysis also provided data on summons use when public intoxication offenses were excluded. With this adjustment, the use of summons increased to 41 percent of cases with arrest used in the other 59 percent.⁵⁰ A follow up report released in July 2011 showed a further increase with summonses used in 70 percent of cases.⁵¹

Figure 5: New Orleans Rate of Summons & Arrest Use Proceeding & Following Enactment of Summons Ordinance⁵²

	Summons Issued	Custodial Arrest
Pre-enactment 2008	24.4%	75%
October 2009	31.5%	68.5%
September 2010	49.8%	50.2%
October 2009 excluding public intoxication	41%	59%
September 2010 excluding public intoxication	58.6%	41.4%
June 2011 excluding public intoxication	70%	30%

The State of New York is another example of a jurisdiction that passed legislation to reduce the use of jail for misdemeanor law violations. New York State law allowed for the issuance of desk appearance tickets (DATs) in lieu of booking but the legislature mandated their use for most misdemeanor crimes excluding domestic violence and sexual exploitation offenses as part of the bail reform package it passed in April 2019.⁵³ When using DATs, police officers arrest the

⁴⁹ Vera Institute of Justice, “Use of Summonses and Custodial Arrests for Municipal Offenses,” April 7, 2010.

⁵⁰ Ibid.

⁵¹ The PFM Group, “A 21st Century Criminal Justice System for the City of New Orleans,” October 2012

⁵² Data compiled from Vera’s April 7, 2010 report, Criminal Justice Leadership Alliance’s September 2010 report, and PFM Group’s October 2012 report.

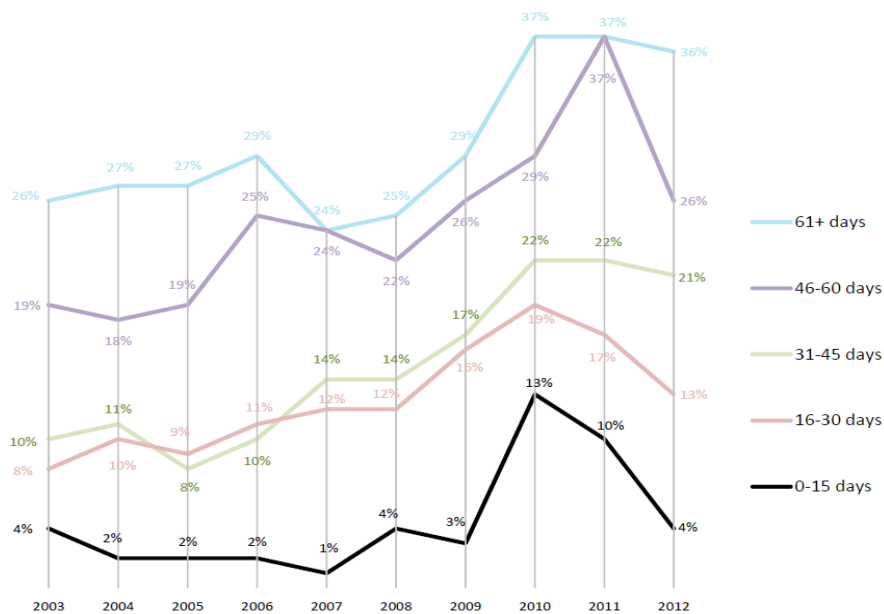
⁵³ Rempel M. & Rodriguez K., “Bail Reform in New York: Legislative Provisions and Implications for New York City, Center for Court Innovation, April 2019.

suspect and transport them to the precinct. After verifying the suspect’s identity, fingerprinting, screening for warrants and reviewing failure to appear for court (FTA) history, which may lead to disqualification, officers will contact the court for an arraignment date.⁵⁴ After the suspect receives and signs the DAT, they are released pending their court appearance. By law, the appearance date must be within 20 days of when the DAT is issued. This timeframe is in line with research conducted by the New York Criminal Justice Agency showing a correlation between higher FTA levels and the amount of time elapsed from when the DAT was issued.⁵⁵ New York’s bail reform law did not go into effect until January 1, 2020 and comprehensive evaluations of its impacts are ongoing.

While the New Orleans example demonstrates that alternative to arrest ordinances can work to reduce jail detention, there are Seattle-specific issues that would require further study and consultation with community to avoid unintended consequences.

According to an [analysis](#) of filing times for out-of-custody cases conducted by former mayoral public safety advisor, Scott Lindsay, it takes CAO prosecutors an average of 187 days to file misdemeanor charges.⁵⁶ As referenced above, FTA levels can rise the longer that it takes for an individual to have their initial court appearance (see Figure 6).

Figure 6: New York City FTA at arraignment by time to arraignment⁵⁷



⁵⁴ New York City Patrol Guide Procedure Number: 208-27 – Desk Appearance Ticket General Procedure.

⁵⁵ Phillips M., The Past, Present, and Possible Future of Desk Appearance Tickets in New York City: Final Report, New York City Criminal Justice Agency, March 2014.

⁵⁶ Lindsay, Scott, “System Failure Part 2: Declines, Delays, and Dismissals,”

⁵⁷ Phillips M., The Past, Present, and Possible Future of Desk Appearance Tickets in New York City: Final Report, New York City Criminal Justice Agency, March 2014.

Given current staffing levels and practices within the CAO's Criminal Division, it is likely that FTAs and SMC-issued warrants as a result of those FTAs will rise if a New Orleans or New York-type ordinance is passed before the City addresses CAO's timeline for filing charges. Rather than reduce jail incarceration, this would likely serve as a net widener as more people would have bench warrants leading to a higher probability of arrest.

In his [response](#) to Scott Lindsay's System Failure reports, City Attorney, Pete Holmes, addressed this delay, stating:

I have 31.5 prosecutors on my team to manage all legal processes associated with 14,000+ police referrals every year. We review every referral, and Theft is the most frequently charged offense by my office. I have envisioned for years an office where sworn, trained prosecutors have the capacity to review all police reports within 24 hours and make charging decisions within 48-72 hours--simply because justice delayed is justice denied. We still aren't there. Without more prosecutors and prosecution support staff, it will continue to take time to file those cases.

Increasing the number of CAO prosecutors would reduce the delay in filing charges but it would also increase the CLS' size. Given that community has asked that the City abstain from increasing spending on the CLS, the City could consider funding additional CAO staff through potential savings from a reduction in police services originating from implementation of the Intercept One interventions recommended in this Chapter. Council could also impose provisos on any additional funds to constrain how they are used. For example, it could specify that those appropriations can only be used for paralegal support staff or for prosecutors to solely work on reviewing SPD referrals and diversion.

Chapter 3: Intercept Two Alternatives

Community Guiding Principles responsive to Intercept Two:

- The City should reduce unequal and disparate treatment in the CLS.
- The City should compassionately and competently engage with vulnerable members of the community experiencing homelessness and mental illness.
- CLS reform should incorporate opportunities for restorative justice practices.
- The City should examine the root causes of why people are in jail and shift resources to address those needs.
- There should be alternatives to a formal law enforcement presence that community can rely on that decreases surveillance and emphasize de-escalation, mediation, and treatment.
- The City should increase opportunities for diversion, decriminalization, and alternatives to arrest to reduce the use of jail as well as surveillance through the probation system.

Following arrest or issuance of a citation or summons for a misdemeanor offense, SPD will refer the case to CAO for a decision on whether to file charges. Intercept Two begins at this stage and encompasses initial court hearings and processes. This intercept provides an opportunity for the City to further address the harm as well as racial and economic disparities created by pretrial detention through the bail process. It is also where the City can strengthen and expand prefile diversion options to ensure accountability for law violations while treating the causes of crime through application of the RNR model.

As with Intercept One, the City has made investments in Intercept Two programs over the few years. In 2017, Councilmember Lisa Herbold sponsored Statement of Legislative Intent (SLI) [303-1-A-2](#) which requested that CAO form a workgroup with SMC and OCR to produce a report exploring whether and how the City could reform its bail practices. The City also invests in various diversion options such as the [CHOOSE 180](#) workshop for young adults as well as through its partnership with King County to fund the [Familiar Faces Initiative](#) programs. It is also starting a domestic violence diversion program in partnership with [Gay City](#) to serve the young adult population.

Bail and Pretrial Detention

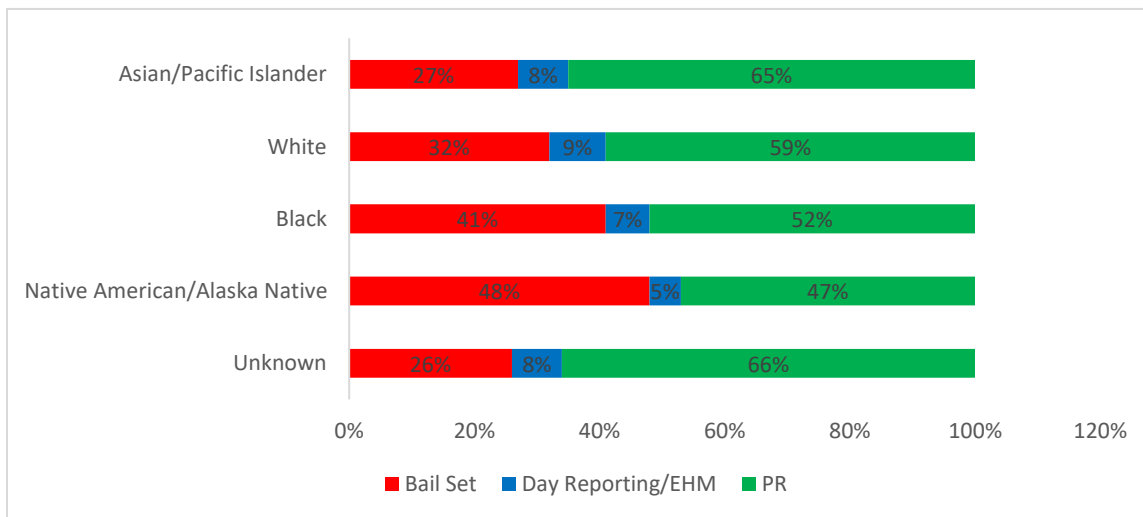
As noted in the previous chapter, arrested individuals held in the King County jail who cannot post the default bail are held in jail until their arraignment. During this initial appearance before an SMC judge, the court reviews whether there is probable cause to believe that the accused has committed the crime charged and sets a bail amount and release conditions.

SMC's bail decisions are informed by the Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) promulgated by the State's Administrative Office of the Courts. Under [Rule 3.2](#), "Release of Accused," individuals charged with misdemeanor crimes have a presumption of release on personal recognizance unless the judge determines that a promise to return is not sufficient to

assure their reappearance or if the accused individual is likely to commit a violent crime or intimidate a witness. If the court finds that these risks exist, CrRLJ 3.2 states that judges must impose the least restrictive release conditions reasonably necessary to ensure compliance. This can include prohibiting the individual from contacting specific people or implementing geographical restrictions on the accused individual’s movement.

When determining release conditions, Rule 3.2 also directs judges to consider the individual’s “employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government; the accused's family ties and relationships; the accused's reputation, character and mental condition; [and] the length of the accused's residence in the community.” As with the data presented on PR in the previous chapter, release and bail conditions during arraignment also have a disproportionately negative impact on the Black and Indigenous communities. According to SMC data for 2018 and 2019 (Figure 7), a smaller percentage of Black and Indigenous community members were released on PR or with conditions such as electronic home monitoring (EHM) during the arraignment stage and a greater percentage had bail set.⁵⁸

Figure 7: Bail and Release Decisions at Arraignment by Race



Negative Effects of Pretrial Detention

There is increasing recognition that the cash bail system creates a two-tiered justice system where individuals with financial means will be able to secure their release while economically disadvantaged people accused of the same or lesser crimes will remain in jail. Given that indigent defendants comprise 90 percent of the booked population and that there is a well-documented economic disparity between the different communities in Seattle (see Figure 8), a

⁵⁸ Seattle Municipal Court Research, Planning and Evaluation Group, “Pre-Trial Releases at Seattle Municipal Court,” March 25, 2021.

bail system that is at least partially based on ability to pay will necessarily have disproportionate racial impacts.

Figure 8: Seattle Population and Wealth Demographics⁵⁹

Data Measure	Seattle
Median Household Income	\$85,654
White	\$96,333
Black or African American	\$39,936
Asian	\$77,470
Hispanic or Latinx	\$64,240
American Indian or Alaska Native	\$31,519
Income Poverty Rate	11.0%
White	7.6%
Black or African American	27.2%
Asian	17.3%
Hispanic or Latinx	15.1%
American Indian or Alaska Native	32.3%

Indeed, former SMC and current KING COUNTY Superior Court Judge Theresa Doyle, addressed the wealth and racial implications of bail in a 2016 King County Bar Bulletin:

Poor defendants who may pose little or no risk of violence or not appearing in court can languish in jail awaiting trial. Wealthy defendants at high risk for violence or flight can remain free by posting cash or property. Taxpayers pay the high costs of detaining people unnecessarily. Society bears the non-economic costs of lost employment, housing, family support, public benefits, and financial and emotional security for the children of the incarcerated person.

Racial disparities are worsened under a money bail system. Studies show that judges, like most others in our society, suffer from implicit racial bias, and that the race of the accused affects release and bail decisions...The money bail system contradicts the presumption of innocence, discriminates on wealth, fails to ensure public safety, jails people unnecessarily, imposes high social costs, and drives up jail costs.⁶⁰

Judge Doyle’s observation regarding bail’s detrimental effects on under resourced communities has also been voiced by leaders from those impacted communities. In the Community Report for the Bail Reform Workgroup, individuals from the City’s East African community stated that bail practices are “crippling our community. People who can’t afford to pay, that’s huge for the family emotionally.”⁶¹

⁵⁹ “Racial Wealth Divide in Seattle,” Prosperity Now, March 2021, https://prosperitynow.org/sites/default/files/Racial%20Wealth%20Divide_%20Profile_Seattle_FINAL_3.2.21.pdf

⁶⁰ Doyle, T., “Fixing the Money Bail System,” King County Bar Association Bulletin, April 2016

⁶¹ Alcantara-Thompson, D., “Report for Bail Reform Workgroup,” 2019.

Compounding the disproportionate individual and societal costs of the current bail system, research also shows that pretrial detention can contribute to negative trial adjudication outcomes through a higher likelihood of convictions primarily through increases in guilty pleas. As the Stanford University Law Review article evaluating misdemeanor pretrial detention in Harris County, TX (referenced in Chapter One) states:

For misdemeanor defendants who are detained pretrial, the worst punishment may come before conviction. Conviction generally means getting out of jail; people detained on misdemeanor charges are routinely offered sentences for “time served” or probation in exchange for tendering a guilty plea. And their incentives to take the deal are overwhelming. For defendants with a job or apartment on the line, the chance to get out of jail may be impossible to pass up. Misdemeanor pretrial detention therefore seems especially likely to induce guilty pleas, including wrongful ones.⁶²

The increase in conviction rates for those held pretrial is stark. For example, the Harris County study found that those detained in jail during the pretrial stage were 25 percent more likely to be convicted primarily due to their pleading guilty as opposed to individuals with comparable charges who were released.⁶³ Similar studies evaluating outcomes for detained misdemeanor and felony defendants in New York City and Philadelphia also found higher conviction rates through guilty pleas for detained individuals at 14 percent and 13 percent respectively when compared to those who were released.⁶⁴ Moreover, the Harris County and Philadelphia studies also found that pretrial detention was correlated with an increase in post-conviction incarceration rates and sentence length when individuals were sentenced to jail or prison sentences. Individuals in Harris County were 43 percent more likely to be sentenced to a jail term and those in Philadelphia faced a 42 percent increase in their sentences. The increase in sentence length was also found for similarly situated individuals in New York City who faced increased jail sentences by 40 percentage points in misdemeanor cases.⁶⁵

While Central Staff was not able to find Seattle-specific studies evaluating the prevalence of increased conviction or sentencing rates for pretrial detained individuals, Judge Doyle’s article did address the sentencing problem and its potential causes, “Judges have discussed concerns about the unconscious influence that a defendant’s custody status has on their sentencing decisions. With an out-of-custody defendant, the judge has to make an affirmative decision to send the person to prison or jail rather than imposing an alternative. An in-custody defendant is already there.”⁶⁶

⁶² Heaton P. et al., “Downstream Consequences of Misdemeanor Pretrial Detention,” *Stanford Law Review*, vol. 69, March 2017

⁶³ Ibid.

⁶⁴ Leslie, E. et al., “The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments,” *Journal of Law and Economics*, vol. 60, August 2017

⁶⁵ Independent Commission on New York City Criminal Justice and Incarceration Reform, “A More Just New York City,” July 2018.

⁶⁶ Doyle, T., “Fixing the Money Bail System,” King County Bar Association Bulletin, April 2016

Recommendations on Addressing Bail

Under the state constitution, Washington State is a right to bail state. Article I, section 20 states that criminal defendants “shall be bailable by sufficient sureties.” The only exception to this is if the defendant is charged with a capital crime where the punishment is a possible life sentence. In that type of felony case, a judge can deny bail and the charged individual could be held in preventive detention until the conclusion of their trial. As bail is codified in the state constitution, the City is limited in its options for reform since eliminating the practice would require action by the state legislature and a vote by the state electorate. Additionally, eliminating the right to bail outright could have the adverse consequence of expanding preventive detention for lower-level crimes.

In its [response](#) to SLI 303-1-A-2, the Bail Reform Workgroup analyzed various alternatives that City institutions could take to reduce or eliminate the use of cash bail and reported on outcomes such as expected racial equity impacts and evaluations of other jurisdictions’ results. The strategies analyzed by the workgroup included:

- Pretrial risk assessments;
- Electronic home monitoring (e.g. ankle monitor)
- Day Reporting (daily/weekly check-ins with a probation counselor. SMC phased out its day reporting program in 2020);
- Unsecured Appearance Bonds (a bail amount is set but is only collected for FTA);
- Text messaging reminders (SMC began offering opt-in text reminders in 2020); and
- Pretrial release to a community-based group

Out of these options, the workgroup’s analysis found that the last three were the least likely to contribute to racial disproportionality while showing effectiveness. Central Staff’s analysis concurs with the Bail Reform Workgroup’s findings and recommends that Council consider including appropriations during upcoming budget deliberations to fund community-based pretrial release programs since pursuing unsecured appearance bonds is under the CAO’s purview and would not require legislative action. Additionally, funding community-based pretrial release programs works within the context of CrRLJ 3.2, which allows judges to release accused individuals to the custody of a person or organization and it is in line with Community’s ask in the Guiding Principles that the City, “partner with community and community-based organizations to ensure accountability and cultural competence.”

Another option for Council’s consideration, which was not evaluated by the Bail Reform Workgroup, is to allocate funding for a community-operated bail fund. These are non-profit organizations which post bail for individuals who cannot afford to do so on their own. Faced with similar limitations to Seattle’s in its ability affect state bail laws, King County [appropriated \\$400,000](#) in its 2019-2020 biennial budget to contract with a community bail fund (the contracting process is ongoing) and New York City [created](#) its own bail fund. New York’s [Liberty Fund](#) provides individuals with case management and voluntary social service, housing, and job

training referrals as well as court reminders and emergency needs such as subway cards and food vouchers similar to what would be provided by community-based pretrial release.

Diversion and Addressing Criminogenic Needs

Diversion programs provide an alternative to traditional prosecution and case processing through the CLS. By diverting individuals at the system's front end, diversion programs can reduce or prevent unnecessary harm and collateral consequences from criminal prosecution while providing accountability and addressing criminogenic needs. Diversion programs also conserve City resources as the costs associated with criminal trials (prosecution and defense attorneys, court personnel, jail detention) are largely bypassed.

Front-end diversion relies on law enforcement and prosecutorial discretion and generally occurs at the pre-booking and pre-filing stages. In pre-booking diversion, law enforcement refers individuals to a program as an alternative to arrest or jail booking. In diversion at the prosecutor level, individuals who fulfill a diversion program's requirements can bypass having charges filed against them (pre-filing) or can have charges dropped if they have already been filed (post-filing or pre-trial). Individuals can also be diverted post-filing through their participation in court programs such as with SMC's Community Court, [Veterans Treatment Court](#), [Mental Health Court](#), [Pre-Trial Diversion Program](#) or its [Domestic Violence Intervention Project](#) (DVIP). While diversion at the pre and post-filing stages both avoid traditional prosecution, pre-filing diversion has additional benefits over post-filing diversion since it is an earlier intervention. Criminal charges, even if they have been dropped due to participation in diversion, can still negatively impact individuals' employment and housing since they can show up on criminal record searches. Pre-filing diversion can also conserve City resources since it would bypass staffing and administrative costs associated with Court processes. It is important to also highlight that when possible, front loading diversion at the pre-booking stage has greater benefits as compared to both pre-filing and post-filing since it is a more upstream intervention.

Expanding opportunities for diversion is one of the recurring recommendations expressed by communities disproportionately impacted by the CLS through the City's previous engagement efforts and in community-produced documents. For example, in its [Final Report](#), the Seattle Reentry Workgroup (established by [Resolution 31637](#)) recommended expanding the use of pre-filing diversion for individuals over the age of 25. This was echoed by the [Budget for Justice Coalition](#) in the divestment strategy it presented to Council and one of the Guiding Principles is that the City should incorporate restorative justice practices and focus on addressing the reasons why individuals become/stay involved in the CLS instead of relying on punitive measures such as jail and probation surveillance.

This chapter describes diversion programs that are currently utilized in Seattle and identifies where there are gaps in the existing diversion programming based on the RNR model. The key takeaways found in this chapter are that diversion programs targeting high utilizers of the CLS have limited space available for new clients and there is a scarcity of available community-

based treatment resources for existing clients. There is also a shortage of available diversion options for individuals posing a low risk to reoffend. A description of the City's current front-end diversion programs and an analysis of gaps based on the RNR model follows.

Current Practice

The City's available front-end diversion programs are:

- Law Enforcement Assisted Diversion/Let Everyone Advance with Dignity (LEAD)
- Vital
- Program for Assertive Community Treatment (PACT)
- Legal Intervention and Network of Care (LINC)
- CHOOSE 180
- Young Adult Family Domestic Violence Pre-Filing Diversion (Gay City)
- LELO/Driving with a suspended license (DWLS) diversion and relicensing

LEAD

LEAD was established as part of resolving litigation challenges to systemic racial disparity in Seattle drug arrests from 2001-2008, when Black people accounted for 63 percent of all those arrested in purposeful drug enforcement operations. At the time, thousands were arrested annually in Seattle on drug felonies, and it was common for someone convicted of delivering even .2 grams of narcotics to face a prison sentence of 5-10 years. Of all mid-sized US cities, Seattle had the second greatest racial disparity in drug arrests.⁶⁷ LEAD was meant to reduce reliance on the CLS to respond to issues related to drug activity, and to direct resources to those who had historically faced the brunt of over-criminalization.

Originally, LEAD was a strictly Intercept One intervention as it required a police referral in lieu of arrest. It later expanded into a hybrid model that allowed for social contact referrals. SPD officers could make these referrals based on known criminal activity relating to drugs without the individual being in custody. The program, as adapted in 2020, is now also an Intercept Zero program as it takes direct community referrals of individuals who chronically commit public order offenses, without the requirement of police referral. This avoids police involvement and can prevent calls to the 911 emergency response system altogether in many cases. LEAD provides long-term, harm reduction-based care for people with complex behavioral health needs.

Individuals referred to LEAD receive an assessment to determine the factors that led them to engage in criminal behavior. The factors evaluated include⁶⁸:

- Prior CLS involvement;

⁶⁷ Beckett, K, "Race and Drug Law Enforcement in Seattle: Report for the American Civil Liberties Union and The Defender Association," September 2008.

⁶⁸ Public Defender Association, "LEAD Referral and Diversion Protocol," November 2018.

- History of gang involvement;
- Chemical dependency;
- Mental health issues;
- Lack of housing;
- Unemployment; and
- Lack of education

After enrollment, individuals receive assistance through a range of long-term wrap-around services such as transitional and permanent housing as well as drug treatment. In line with its harm reduction approach, sobriety is not a requirement for LEAD participation and new criminal activity does not necessarily disqualify an individual from the program. Once an individual is enrolled, there is no expiration date for them to access LEAD services.

Vital

The King County Vital program provides comprehensive support and case management for individuals with behavioral health and substance use disorder who are frequently involved in the CLS. Most Vital participants are experiencing homelessness and require an intensive level of community-based support.

For an individual to meet Vital eligibility criteria, they must have (1) been booked into King County jails at least four times over two of the last three years; and (2) have a behavioral health and/or substance use disorder. While individuals can be referred to Vital at the front end of the CLS, referrals can also occur at different stages such as upon release from jail. As such, it is not strictly a pre-filing diversion program.

Vital employs a harm reduction model and works with clients to define and support their self-identified goals. As with the LEAD program, there are no set timelines to transition clients out of Vital, sobriety is not required, and new criminal activity does not automatically result in termination. Vital services are provided by an Intensive Case Management Team (ICMT). Through the ICMT, the Vital program provides mental health and substance use disorder treatment that is integrated with primary health care and life skills development. The program includes a housing component and the ICMT works with the Seattle Housing Authority and Plymouth Housing Group to find permanent supportive housing (PSH) for Vital participants. The Vital program is at capacity and serves 60 individuals throughout the county.⁶⁹

PACT

PACT is a King County program that serves individuals with severe and persistent mental illness such as schizophrenia and other psychotic disorders. It is targeted toward individuals that due to their mental illness, have difficulty performing daily life activities and many PACT clients have had multiple encounters with crisis response systems such as mental health hospitalizations

⁶⁹ High-Barrier Individuals Working Group, "Progress Report," September 2019.

and the CLS. Over the past two years, 60 percent of new PACT clients had a recent competency order.⁷⁰

Through coordinated community-based treatment by a team of behavioral health specialists, PACT works with clients to help them understand how to reduce and manage their symptoms. It also aids with meeting basic needs like housing, employment, and transition toward independent living. PACT teams feature small caseloads of about 10 clients and services are provided without a fixed end date. The program has space for 270 clients, is at capacity, and has over 40 individuals on its waiting list.

LINC

LINC is a six to 12-month diversion program run by King County for individuals who have been accused of committing low-level felonies or misdemeanors and are likely to have legal competency raised. The program is intended to reduce referred individuals' further contact with the CLS and eliminate the need for competency evaluation or restoration services.

Under Washington State law, ([RCW 10.77.010](#)), criminal court proceedings cannot continue when a defendant lacks the capacity to understand the nature of the proceedings against them or is incapable of assisting in their own defense as a result of mental disease or defect. Competency is determined by the Court following a clinical evaluation. If an individual is found incompetent, the Court can order competency restoration or may dismiss the charges. Competency proceedings are comparatively rare in the City's misdemeanor system as legal competency is only raised for about eight percent of the near 7,400 individuals with cases before the SMC. Of those that complete the evaluation process, approximately 52 percent are found incompetent.⁷¹

The CAO determines eligibility based on charges (non-violent property crimes), recent or repeated competency concerns, and whether the individual has disqualifying convictions. If an individual has unmet behavioral health needs and appears eligible for LINC, their name is forwarded to the Community House Mental Health Agency (CHMHA) Competency Boundary Spanner for further screening. Individuals diverted to LINC receive intensive case management, peer support services, on-demand psychiatry and medication management and legal coordination to meet existing court obligations. The program has availability for 90 clients, but King County Behavioral Health and Recovery Division staff report that the program is serving 90+ individuals.

Young Adult Mainstream Pre-Filing Diversion - CHOOSE 180 and CAO

CHOOSE 180 in a direct partnership with the CAO is the City's mainstream pre-filing diversion program for young adults between the ages of 18 to 24 who are accused of committing misdemeanor crimes such as theft, assault, property destruction, criminal trespass, obstructing

⁷⁰ Ibid.

⁷¹ High-Barrier Individuals Working Group, "Initial Data Work on Competency and the Involuntary Treatment Act (ITA)," November 2019

an officer, and minor in possession (alcohol).⁷² The CAO determines eligibility and diverted individuals attend a half-day workshop led by CHOOSE 180 credible messengers with lived experience in the CLS.

During the session, individuals engage in small group discussions to identify the behaviors that led to their current situation and think about ways that they can avoid future problem behaviors. Participants are also offered support and referrals to resources such as substance use disorder/mental health treatment, employment and job readiness assistance, and discounted public transportation benefits. A CHOOSE 180 Pivot Point Specialist is funded to work with participants on a voluntary basis after the Workshop and some of those supportive relationships have lasted upwards of a year. SMC's Community Resource Center is also a partner and helps connect young adults post-workshop to resources. CHOOSE 180 is offered to individuals as a one-time diversion opportunity and future criminal charges would be pursued through traditional means. A goal of the program from the Racial Equity Toolkit is to "Eliminate racial disparities in percentage of cases filed against young adults (18-24)."⁷³ In 2019, 64 percent of participants in the CHOOSE 180 diversion program identified as persons of color while only 27 percent identified as White (nine percent were unknown or did not wish to identify).⁷⁴ Greater diversity in diversion should result in less disproportionality in the traditional system.

DWLS 3 Pre-Filing Diversion/Relicensing — LELO, CAO, and FAS

The DWLS diversion program is a partnership between Legacy of Equality, Leadership, and Organizing (LELO), a community-based organization, the CAO and Seattle's Finance and Administrative Services Division. The program targets individuals found to be driving with a suspended license due largely to economic circumstances, primarily an inability to pay traffic violations. The program began as a diversion program where the CAO screened for eligibility and participants had to complete an assessment and recovery plan that detailed the steps needed to be taken for them to regain their license. While re-licensing was the program's ultimate goal, participants did not have to be re-licensed to have their charges diverted. Even with LELOs assistance some participants remain unable to become relicensed due to financial constraints. LELO also helps participants with referrals to support services and the Community Resource Center also helps connect participants. In the CAO's continued commitment to address the inequities of DWLS 3, the CAO further expanded its use of prosecutorial discretion. Now rather than diverting the DWLS 3 charges with the threat of prosecution, the individuals have their charges declined and are referred to LELO for support.

Young Adult Family Domestic Violence Pre-Filing Diversion—Gay City and CAO

Gay City in a direct partnership with CAO is piloting a diversion program for young adults between the ages of 18 and 24 who are accused of committing a domestic violence

⁷² Seattle City Attorney's Office, "Community Report: Mainstream Pre-Filing Diversion Program – 2019."

⁷³ Seattle City Attorney's Office, "Report on Racial Equity Analysis: Seattle Pre-Filing Diversion Program, Young Adult Mainstream Misdemeanors," April 25, 2018.

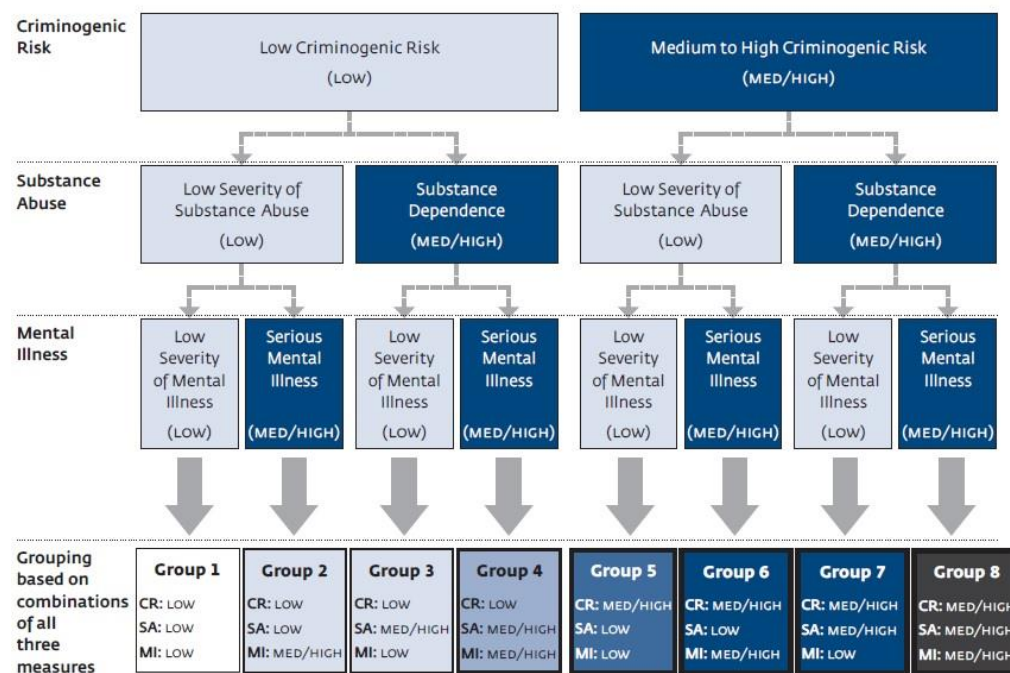
⁷⁴ Seattle City Attorney's Office, "Community Report: Mainstream Pre-Filing Diversion Program – 2019."

misdemeanor against a non-intimate partner family member. The program is designed around the 5 Social Determinants of Health: Economic Stability, Education, Health/Health care, Neighborhood/Built Environment, and Social/Community Context. By addressing each determinant of health, individuals can more thoroughly remove oppressive barriers and increase equitable access to peoples’ self-determination, liberation and joy. Participants will engage in a 5-week cohort model workshop series (Access to Change) where they will identify and set goals that build self-determination and self-accountability, establish actions plans for those goals, and determine the resources necessary to accomplish those action plans. Access to Change is facilitated with a trauma-informed and anti-violence analysis and the team is made up entirely of Black T/GNC staff and youth co-leads. The team will also engage with the harmed family member and seek to connect them to resources.

Existing Gaps and Limitations

In a joint publication addressing behavioral health needs for CLS-involved individuals, the Council on State Governments, the National Institute of Corrections, and the DOJ’s Bureau of Justice Assistance provided the following framework to analyze resource allocation and categorize individuals based on criminogenic risk, substance abuse, and mental illness (Figure 9).

Figure 9: Criminogenic Risk and Behavioral Health Needs Framework⁷⁵



In line with the RNR model’s risk principle, individuals categorized into groups five through eight (representing those with the highest criminogenic risk) should be targeted for intensive

⁷⁵ Adults with Behavioral Health Needs Under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery, The Council of State Government, 2012

services. As LEAD, Vital, PACT, and LINC provide intensive case management through community-based services for individuals with behavioral health needs who have had repeated involvement in the CLS, the City's existing programming appropriately targets the right population. Additionally, many of the services provided by these programs are centered on treating substance use and mental health disorders, assisting in education and employment skills, and providing connections to transitional and PSH. This focus addresses several misdemeanor criminogenic risk/need factors with appropriate interventions.

While Vital, LINC, and PACT have not been independently evaluated, a University of Washington (UW) study of the LEAD program's effects on housing, employment and income found that during the 18-month evaluation period, LEAD participants were over twice as likely to obtain shelter in any given month following program enrollment and were 46 percent more likely to be on the employment continuum.⁷⁶ The RNR model predicts that effective treatment of these risk/needs reduces repeat CLS involvement and the UW study found that LEAD participants had "60 percent lower odds of having at least one arrest subsequent to program entry,"⁷⁷ as compared to the Non-LEAD control group. Similarly, data released by the Vital program shows that, "over 78 percent of participants had fewer annual bookings in King County jail while enrolled in Vital than during the three years prior," and that, "the average number of annual bookings decreased over 35 percent."⁷⁸

As off-ramps to CLS involvement, the major limitation in these diversion programs is capacity in terms of space for new clients and scarcity of available community-based treatment resources. As referenced above, the LEAD program has exceeded its capacity with case managers serving an additional 19 clients over the maximum viable caseload. Similarly, the Vital program's 60 client spots are full. LINC and PACT serve a more specific subset of individuals but are also at capacity. This may be a contributing factor in the relatively small number of "high-barrier individuals" (the 500 most frequently identified suspects by SPD) enrolled in the existing intensive case management diversion programs. According to the September 2019 High-Barrier Individuals Working Group "Progress Report," only "seventy-three individuals, or 16 percent of the 465 identified high-barrier individuals, were identified as currently enrolled in one of the four programs presented as associated most directly with Familiar Faces (LEAD, LINC, PACT, or Vital)."⁷⁹ Over the past few budget cycles, expanding LEAD has been one of Council's priorities and during the 2021 budget deliberations, it adopted SLI [HSD-006-A-001](#) (sponsored by CM Lisa Herbold) requesting that the Human Services Department (HSD) provide a report evaluating the public funding necessary to expand LEAD to a level where it can accept all priority qualifying referrals citywide.

⁷⁶ Clifasefi S., Collins S., & Lonczak H., Seattle's Law Enforcement Assisted Diversion (LEAD) Program: Within-Subjects Changes on Housing, Employment, and Income/Benefits Outcomes and Associations with Recidivism, *Crime & Delinquency Journal*, 2017.

⁷⁷ Clifasefi S., Collins S., & Lonczak H., Seattle's Law Enforcement Assisted Diversion (LEAD): Program Effects on Recidivism Outcomes, *Evaluation and Program Planning Journal*, 2017.

⁷⁸ High-Barrier Individuals Working Group, "Progress Report," September 2019.

⁷⁹ Ibid.

The scarcity of community-based treatment resources available to diversion programs was documented in a 2016 report commissioned by the State’s Office of Financial Management (OFM) on diversion programs for individuals with mental illness. The report, which surveyed diversion opportunities such as LEAD, Vital, and PACT-type programs, found an urgent need for increased capacity for services such as outpatient and residential mental health treatment, chemical dependency treatment, and supportive service-rich housing.⁸⁰ Indeed, the City’s Roots of the Homelessness Crisis [website](#) notes that the Seattle region’s shortage of chemical dependency treatment availability leaves over 150 people on treatment waitlists every day. In terms of housing scarcity, King County’s Behavioral Health and Recovery Division, which administers LINC, reports that for its 90+ clients, LINC has 10 respite beds and “a very small amount of housing” available through the Trueblood Settlement Transitional Supportive Housing program. As these beds “are generally full,” the program must work to leverage external homeless and low-income housing resources. Similarly, LEAD reported in documents it submitted to Council and the Mayor’s Office that it, “has no set-aside housing units or channel, and LEAD clients generally do not score high enough on the vulnerability prioritization index for Coordinated Entry to be eligible for permanent housing via CEA (King County’s housing portal).”⁸¹

As homelessness and housing instability has been assessed as a major risk/need factor in the misdemeanor population, the City should look toward increasing its investments in PSH as a public safety measure as there is strong evidence that this type of housing, in particular, can decrease CLS involvement among the highest jail/emergency services utilizers. For example, building on previous research, a 2013 [report](#) by King County’s Department of Community and Human Services evaluated the acute care and jail utilization impacts of King County-sponsored PSH programs. It found that eight of the nine programs reduced jail utilization for enrolled individuals with reductions in bookings ranging from 27 percent to 56 percent and reductions in jail days from 23 percent to 63 percent.⁸² This reduction in jail utilization as well as a corresponding reduction in the use of emergency health services resulted in significant cost savings:

Taking the cost estimates together, the data suggest that people involved in PSH programs would likely save, on average, approximately \$1,474 to \$33,125 per person on acute care and jail utilization during their first year in a PSH program. Cost savings would be predicted to be maximized for specific aspects of service utilization for programs that specialize in reducing such use.

Participants of PSH programs would also save costs associated with police and courts (associated with reduced jail stays) and shelter costs that are not accounted for in this report. Participants may also reduce utilization of state

⁸⁰ Jail Diversion for People with Mental Illness in Washington State: A Study Conducted for the State of Washington Office of Financial Management, Joplin Consulting, November 2016.

⁸¹ Public Defender Association, “LEAD Data Request for Mayor’s Office,” October 2019.

⁸² King County Department of Community and Human Services, “Impact of Supported Housing on Acute Care and Jail Utilization,” June 2013

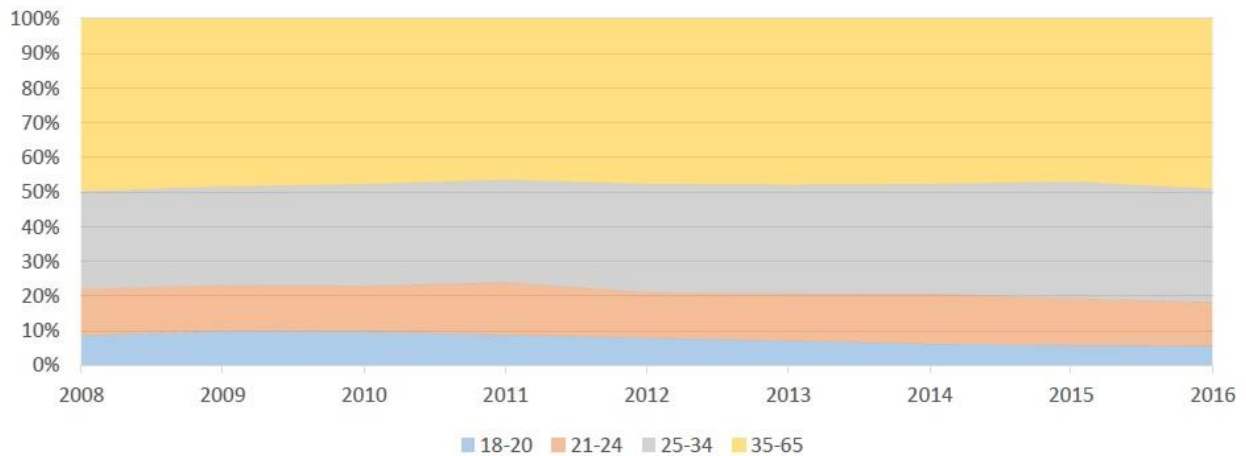
hospitals and prisons, which are not reported in this summary but discussed in some program-specific summaries.

Cost reductions based on reduced acute care and jail use can be viewed in the context of PSH costs. PSH operating costs in King County are \$10,000-\$15,000 per year and as such, the costs reduced from decreased acute care and jail utilization would likely offset program costs in addition to providing participants with a better quality of life.⁸³

Another gap in the City’s existing diversion options is the lack of diversion programming for lower risk individuals. In the notes explaining the Criminogenic Risks and Behavioral Health Needs Framework, the authors note that, “missed opportunities for diversion from the criminal justice system are most likely to happen along the left (lower risk) of the flow chart.”⁸⁴ This observation holds true for Seattle as the City has three options for individuals who may fall within the lower risk categories represented in groups one through four – the Young Adult Mainstream Diversion--CHOOSE 180, DWLS/Relicensing program—LELO, and Young Adult Family Domestic Violence Diversion-Gay City.

As stated previously, CHOOSE 180 and Gay City serve young adults up to age 24. According to CAO Criminal Division staff, this limited age range was chosen due to recent science on brain development showing that young adults’ brains do not fully mature until around age 25. Around 80 percent of the charges filed by CAO, however, involve individuals over the age of 25 (Figure 10).

Figure 10: Percent of Total CAO Misdemeanor Charges by Age Group⁸⁵



⁸³ Ibid.

⁸⁴ Adults with Behavioral Health Needs Under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery, The Council of State Government, 2012

⁸⁵ Helfgott J.B., Parkin W., Fisher C., & Kaur, S. Trends in Misdemeanor Arrests, Referrals, & Charges in Seattle – Final Report. Seattle University, October 2018.

While many of these individuals may fall into the higher risk categories that are served by LEAD, Vital, LINC, and PACT, the City does not currently offer a mainstream diversion option for those who are not repeatedly cycling through the CLS. The DWLS program is not age-restricted but it is intended to address only one specific crime.

In an effort to address this gap, Council adopted [SLI CJ-24-A-2](#) as part of the 2020 budget and asked CAO to provide a report evaluating the staffing, costs, and additional resources that would be required to create a mainstream diversion program for individuals in the 25+ age group. CAO published its [report](#) in May 2020 and is in the early stages of beginning the racial equity toolkit (RET) process.

As the City considers expanding diversion options for this group, it should explore restorative justice-based programming. Programs that rely on restorative justice (RJ) principles aim to address and repair harm caused when a crime is committed while holding individuals accountable. Since the RNR model's risk principle states that interventions should be matched to an individual's risk to reoffend, individuals with a lower risk level would require a lighter touch, which restorative justice conferencing could provide. During RJ conferencing, the person accused of committing the crime meets with the victim(s) (or a victim advocate if the victim does not want to participate) as well as community members to discuss the harm that their action caused to the individual victim(s) and to the greater community. As a group, they also evaluate possible restitution that can address or mitigate that harm. RJ-based programming is more common in the American juvenile justice system than in the adult system and as a result, evaluations for RJ-based programming largely focus on juvenile programs. While there is an absence of adult-level data in relation to juvenile-level data, the Washington State Institute for Public Policy (WSIPP) found in a meta-analysis of RJ-based programs that these programs do reduce recidivism for juvenile individuals assessed as low-risk and provided cost-savings over traditional case processing through prosecution.⁸⁶ RJ programs have also been shown to improve victim satisfaction in case outcomes as compared to traditional CLS processing.⁸⁷ Lastly, creating an RJ-based diversion alternative aligns with the Guiding Principles' ask that, "CLS reform should incorporate opportunities for restorative justice practices."

Operationalizing RNR-based Diversion

If the City is to align its practices in this intercept with the RNR model, diverting cases to the appropriate intervention must be the norm instead of resorting to prosecution. The City should ensure that to the greatest extent possible, the type of misdemeanor crime committed, and individuals' previous histories with diversion programs do not act as barriers to being offered diversion options. The reason for this is twofold. First, the Risk Principle does not equate the seriousness or type of crime with risk to reoffend. In other words, a person accused of harassment or assault is not high risk by virtue of their alleged offense. As explained by Dr.

⁸⁶ Washington State Institute for Public Policy, "Restorative justice conferencing or victim offender mediation for court-involved youth," 2019

⁸⁷ United States Department of Justice – Office of Justice Programs, "Effectiveness of Restorative Justice Programs," July 2017.

Douglas Marlowe, the Chief of Science, Law and Policy for the National Association of Drug Court Professionals:

High risk indicates that an event is more likely to occur than by chance or on average, and low risk indicates it is less likely to occur. In most instances, it does not refer to the seriousness or harmfulness of the event...If one person has a 60 percent chance of being arrested for drug possession and another has a 10 percent chance of being arrested for assault, the first person is likely to score higher on most commonly administered risk assessment tools.⁸⁸

Denying additional diversion opportunities if an individual commits additional crime is also problematic in light of the RNR model since absent information on an individual's assessed risk or criminogenic needs, it is possible that the person did not receive the type of services or intensity of services that would address their situation. In this context, the City would have expended resources on treatment that would likely be ineffective for that person and would then rely on punitive measures and punishment because the intervention did not work. In order to avoid this scenario and increase the probability of success, individuals should be assessed first (either by CAO or a contracted community-based organization) and then offered a diversion option matched to their risk/need level. Also, if individuals recidivate following their participation in a diversion option, they should be reassessed as they may require higher intensity services.

⁸⁸ Marlowe, D., "The Most Carefully Studied, Yet Least Understood Terms in the Criminal Justice Lexicon: Risk, Need, and Responsivity," Policy Research Associates/SAMHSA Gains Center, www.prainc.com/risk-need-responsivity/

Chapter 4: Intercept Zero Alternatives

Community Guiding Principles responsive to Intercept Zero:

- The City should engage directly impacted communities on a consistent basis and involve them in the decision-making and solutions. It should also partner with directly impacted communities and community-based organizations to ensure accountability and cultural competence. CLS reform/realignment should lead with a race and social justice equity lens. It should also honor human dignity.
- The City should examine the root causes of why people are in jail and shift resources to address those needs.
- The City should acknowledge that involvement in the CLS (overall and not specifically the City’s municipal system) is often preceded by a variety of social factors including homelessness, child protection services (CPS) intervention, and poverty among other risk factors. Therefore, CLS reform should also include interventions in expanding access to [economic] resources and social services for vulnerable communities.

In 2017, the Substance Abuse and Mental Health Services Administration’s ([SAMHSA](#)) GAINS Center, updated the sequential intercept model to include a new intercept – Intercept Zero. The goal of introducing Intercept Zero was to align systems and services and connect individuals with treatment before a behavioral health crisis begins or at the earliest possible stage of system interaction. With its focus on addressing mental health/health care needs at the earliest stages, Intercept Zero has been referred to as the “ultimate intercept.”

In terms of the City’s CLS realignment effort, Intercept Zero can play a similar role in that it is an opportunity for the City to increase its investments in early intervention programs to address criminogenic needs before individuals come into contact with system. Indeed, in its study on criminogenic needs in the misdemeanor population, the Center for Court Innovation found that, “individual criminal histories are - at least partially - shaped by the underlying needs in the first place... [and that] criminogenic needs influence why people commit their very first criminal act.”⁸⁹

In line with the Community Guiding Principle listed at the beginning of this chapter that the City engage with directly impacted communities on a consistent basis and involve them in decision-making and solutions, the City could use a participatory budgeting (PB) process to allocate funding to community-generated proposals that address criminogenic needs. Indeed, the Council-funded Black Brilliance Project’s (BBP) [Final Report](#) recommended that the City use a PB process to allocate investments to: housing and physical space, mental health, youth and children, crisis response and wellness, and economic development. Although the BBP did not specifically focus its research on interventions that could act as preventative measures to CLS-involvement, the broad categories of investments that it recommended could address several

⁸⁹ Rempel, Michael et al. “Understanding Risk and Needs in the Misdemeanor Population: A Case Study in New York City, *The Center for Court Innovation*, May 2018.

criminogenic needs associated with socio-economic disadvantages. For example, increasing targeted investments in affordable housing and economic development could contribute to lowering homelessness/housing insecurity and increasing economic opportunities for residents in historically under-resourced communities.

The importance of increasing social service investments in BIPOC communities as a public safety measure has also been expressed by Council President Gonzalez. In her speech referenced in this report's opening chapter regarding the CLS realignment project's scope, CP Gonzalez added that "This is quite literally undoing legacies and generations of harm caused by racism and institutional racism and this work is not going to get done in a couple of budget cycle...It is one piece of a very large complex puzzle that we just have to keep chipping away at."⁹⁰

In addition to serving as a preventative measure to reduce the likelihood of future CLS involvement through the reduction of criminogenic needs, expanding upstream investments in historically under-resourced communities also aligns with the City's [Race and Social Justice Initiative](#) to reduce racial disparities and achieve racial equity. It is well [documented](#) that BIPOC communities in Seattle experience poverty at disproportionately high rates and as the United Way of King County wrote in its 2015 report on Understanding King County Racial Inequities, "circumstances such as homelessness, unemployment, lack of access to quality preschool programs and disengagement from school do not occur in isolation...[and that] People of color are disproportionately poor as a result of oppression, historical disadvantages and discriminatory practices that have been institutionalized."⁹¹

Preventing Adverse Childhood Experiences

The BBP's recommendation that the City also focus on increasing investments in programming for BIPOC children and youth represents an additional way of frontloading interventions in the ultimate intercept. Expanding beyond the Risk-Need-Responsivity model and criminogenic needs, research also shows that exposure to adverse childhood experiences (ACEs) can have a significant negative impact on children's development. ACEs are traumatic experiences (figure 11) which can cause toxic stress in children. Repeated exposure to toxic stress through multiple ACEs at that age can affect brain development and harm children's nervous, endocrine, and immune systems as well as the physical structure of their DNA.⁹² These types of changes can affect children's impulse control, attention, decision-making, and emotional regulation. Research also shows that children who experience higher levels of ACEs can struggle to learn and complete schooling. They are also at a higher risk for engaging in violent behavior and becoming involved in the juvenile CLS.⁹³

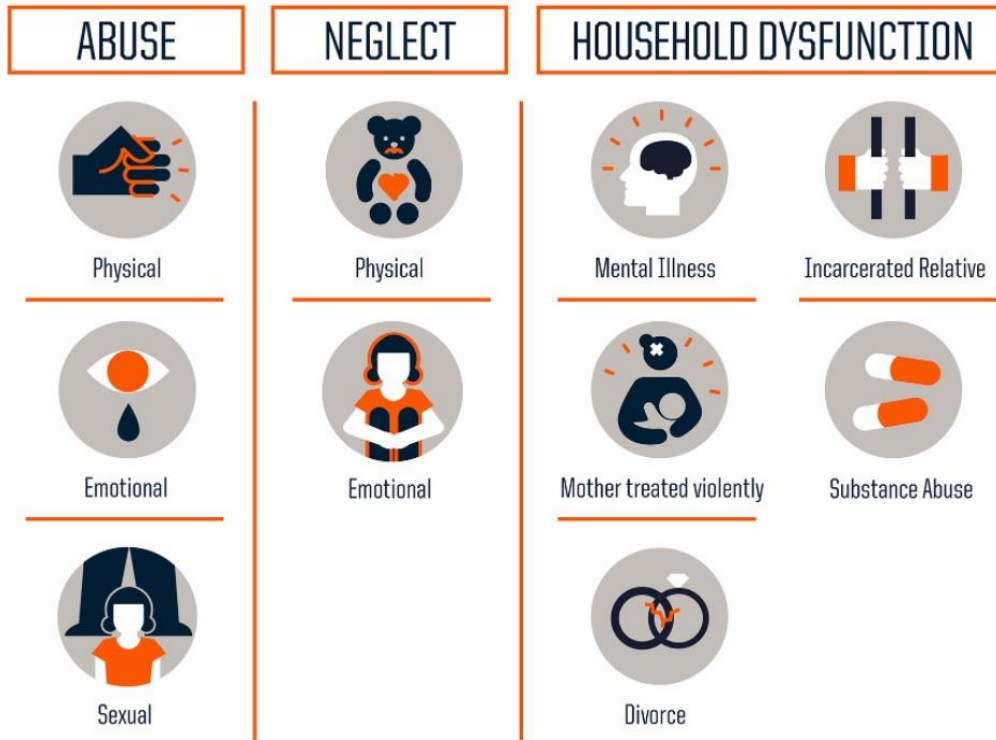
⁹⁰ Seattle City Council Select Budget Committee Meeting, 9/27/2019 (OCR budget presentation)

⁹¹ Murnan, F and Park, A, "Understanding King County Racial Inequities," United Way of King County, November 2015.

⁹² Centers for Disease Control and Prevention, "Preventing Adverse Childhood Experiences: Leveraging the Best Available Evidence," 2019

⁹³ Ibid.

Figure 11: Categories of Adverse Childhood Experiences (ACEs)



The impact of accumulated ACEs in children can have lifelong repercussions as they are correlated with an increase in harmful medical conditions in adults such as chronic health and mental health problems and substance abuse/misuse. Indeed, the Centers for Disease Control and Prevention (CDC) note that at least five of the top 10 leading causes of death in adults are associated with ACEs.⁹⁴ The CDC also notes that adults who experienced higher levels of ACEs may face increased employment instability leading to struggles with finances, jobs, and family. These effects in turn can have a cyclical intergenerational impact on children who may experience ACEs themselves as a result.⁹⁵

An additional harmful consequence for children who experience ACEs is an increased likelihood of incarceration and CLS involvement as adults. In a 2013 study comparing the rate of ACEs among individuals convicted of a crime with those of a control group found that the convicted individuals “reported nearly four times as many adverse events in childhood than an adult male normative sample.”⁹⁶

⁹⁴ Centers for Disease Control and Prevention, “Vital Signs – Adverse Childhood Experiences: Preventing Early Trauma to Improve Adult Health,” <https://www.cdc.gov/vitalsigns/aces/index.html>

⁹⁵ Centers for Disease Control and Prevention, “Preventing Adverse Childhood Experiences: Leveraging the Best Available Evidence,” 2019.

⁹⁶ Reavis J. et al., “Adverse Childhood Experiences and Adult Criminality: How long must we live before we possess our own lives,” *The Permanente Journal*, Spring 2013.

Although there are individual and family [risk factors](#) that can increase the probability that a child will experience ACEs, there are community risk factors as well. These include communities with:

- high rates of violence and crime,
- high rates of poverty and limited educational and economic opportunities,
- high unemployment rates,
- few community activities for young people,
- unstable housing and where residents move frequently; and
- communities where families frequently experience food insecurity

In light of the common link between many of the community risk factors, it is not surprising that:

A growing body of evidence indicates that poverty is highly comorbid with ACE exposure and that children living in poverty are more likely than their peers to experience frequent and intense adversities...A variety of childhood adversities have a root cause in family economic insufficiency, indicating that poverty may likely be the first adversity that many children experience. Poverty acts as a reinforcing mechanism, disproportionately burdening low-income families with stressors that give rise to adverse conditions, which then convey additional stress and cognitive dysfunction. The devastating effect of this negative feedback loop on the development of children is well documented, and childhood poverty has been strongly linked to a variety of negative outcomes across the life course.”⁹⁷

The CDC states that preventing ACEs is one of its top priorities and in 2019, it published a [report](#) with strategies (figure 12) and guidance to assist communities in this effort. Due to the lifelong impact that ACEs can have on Seattle’s youngest generations, preventing and reducing their impact should be a priority for the City as part of its CLS realignment effort. This is work, however, that a municipality cannot do alone. Given the scope of the problem, the amount of resources that would likely be required to address ACEs in a priority manner, and that families interact with multiple system actors, this effort would require strengthening existing partnerships and aligning goals with not only impacted communities and community-based organizations, but with other government institutions such as the public school district, and the state, county, and federal governments.

⁹⁷ Hughes, M. and Tucker, W., “Poverty as an Adverse Childhood Experience,” North Carolina Medical Journal, vol. 79 no. 2, March 2018.

Figure 12: Strategies for Preventing ACEs

Preventing ACEs	
Strategy	Approach
Strengthen economic supports to families	<ul style="list-style-type: none"> • Strengthening household financial security • Family-friendly work policies
Promote social norms that protect against violence and adversity	<ul style="list-style-type: none"> • Public education campaigns • Legislative approaches to reduce corporal punishment • Bystander approaches • Men and boys as allies in prevention
Ensure a strong start for children	<ul style="list-style-type: none"> • Early childhood home visitation • High-quality child care • Preschool enrichment with family engagement
Teach skills	<ul style="list-style-type: none"> • Social-emotional learning • Safe dating and healthy relationship skill programs • Parenting skills and family relationship approaches
Connect youth to caring adults and activities	<ul style="list-style-type: none"> • Mentoring programs • After-school programs
Intervene to lessen immediate and long-term harms	<ul style="list-style-type: none"> • Enhanced primary care • Victim-centered services • Treatment to lessen the harms of ACEs • Treatment to prevent problem behavior and future involvement in violence • Family-centered treatment for substance use disorders

As part of its 2021 adopted budget, the City created a new [Safe and Thriving Communities division](#) within HSD that will work with community partners to expand the City’s community building initiatives. As the City looks toward increasing investments in CLS prevention measures, it has multiple resources that it can consult in designing evidence-based community-centered programs that can prevent or treat ACEs. For example, in 2004, the [Washington State Institute for Public Policy](#) (WSIPP) reviewed various early intervention programs and produced a [cost-benefit analysis](#) that included potential future savings in areas such as CLS expenditures. Examples of recommended programs listed in the report include early childhood education for low-income 3 and 4-year-olds, comprehensive home visits by nurses for low-income pre and post-natal women, and youth mentoring programs.

Additionally, since the 2012 passage of [Engrossed Second Substitute House Bill \(ESSHB\) 2536](#), WSIPP and the University of Washington’s [Evidence-Based Practice Institute](#) (EBPI) have created and periodically updated an [inventory of programs and services](#) focused on juvenile mental health, child welfare, and juvenile justice that are evidence-based, research-based, or are promising practices. Also, in 2012, the City Auditor worked with the [Center for Evidence-Based Crime Policy](#) (CEBC) at George Mason University to produce an evidence-based assessment of the City’s crime prevention programs. This included evaluations of programs and services geared toward families/early intervention and community-based prevention.

In designing future contracts with community-based partners for CLS programming, the City should provide technical assistance with data collection and perform periodic program evaluations based on the data to evaluate whether investments produce the expected results. This is an important component of ensuring that programs are evidence-based in their design and operation as the CEBC assessment found that in 2012:

- 55 percent of the City’s crime prevention programs had inconclusive evidence of their effectiveness,
- 13 percent had no supporting research or theoretical basis for their potential effectiveness; and
- Five percent had the potential to backfire and produce negative outcomes that could worsen crime rather than reducing it.

Case Examples of Successful Intercept Zero Interventions

This section provides brief case examples of two early intervention programs that have demonstrated long-term successes for participants and their communities. These examples represent Intercept Zero investments in children and families which were developed through community-based partnerships and which align with Community’s Guiding Principles and evidence-based practices. Both of these programs are limited in terms of the size or the scope of the population served and if the City were to make comparable investments at the scale needed to match the beneficial impacts exhibited by these programs, it would require a revenue increase or a reprioritizing/refocusing of current spending. Nonetheless, the programs described below demonstrate the promise that these types of early investments can have as a long-term CLS realignment strategy.

Tangelo Park Program

Tangelo Park is a small mainly Black community of about 3,000 residents near Orlando, FL with a median income of around \$37,565 (for reference, Seattle’s Black and Indigenous communities have respective median incomes of \$39,936 and \$31,519). In the 1980s and the beginning of the 1990s, Tangelo Park had the highest neighborhood crime rate in Central Florida.⁹⁸ It had low property values; its schools faced declining test scores, high student absentee rates, and its high school had a dropout rate of close to 50 percent.⁹⁹

Over the course of the last 30 years, however, Tangelo Park has had many successes in transforming the lives of its community members. Beginning in 1993, the town began a partnership with philanthropist, Harris Rosen, to create a community-based initiative to invest

⁹⁸ Orange County Government, “An Orange County Neighborhood You Should Know: Tangelo Park Remains a Close-Knit and Unified Community,” November 2019 - <https://newsroom.ocfl.net/2019/11/an-orange-county-neighborhood-you-should-know-tangelo-park-remains-a-close-knit-and-unified-community/>

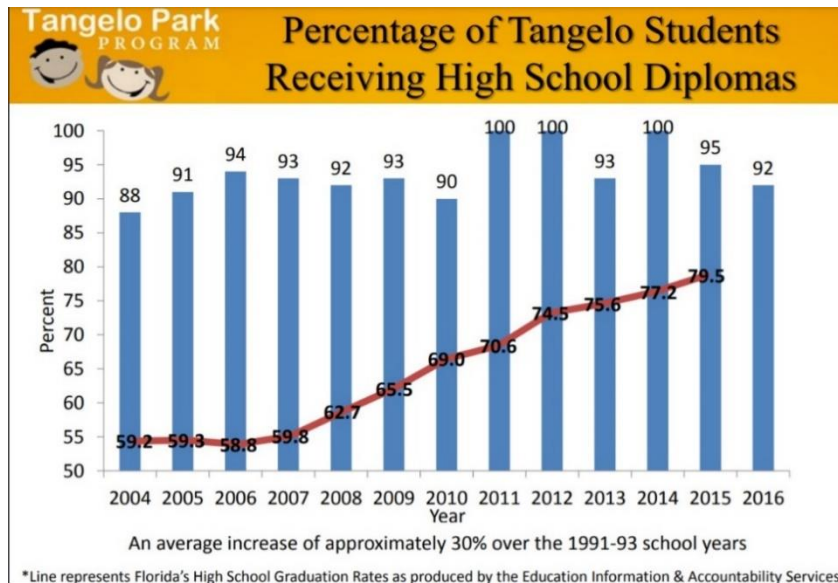
⁹⁹ Weiss, E., “Tangelo Park Program: A Broader, Bolder Approach to Education,” Economic Policy Institute, 2018 - <http://www.boldapproach.org/case-study/tangelo-park-program-orlando-florida-a-broader-bolder-approach-to-education/>

in children and families. With funding of close to \$13 million over the course of the partnership, the [Tangelo Park Program](#) (TPP) offers its residents at no cost:

- Childcare/Pre-school opportunities for children between the ages of two and four,
- Parenting classes and vocational/technical opportunities for parents of children enrolled in school,
- Full tuition, including room, board, and living expenses for every Tangelo Park high school graduate accepted by a vocational school, community college, or public university in Florida.¹⁰⁰

By 2003, Tangelo Park’s crime rate for most crimes (excluding robbery) had dropped significantly with motor vehicle theft rates declining by 26 percent, assault rates by 21 percent and burglary rates by 46 percent. In comparison, communities within the same geographic area had a 20 percent increase in auto theft rates, a small (.3 percent) increase in assault rates, and a 10 percent decrease in burglary rates.¹⁰¹ Additionally, the average home value increased from \$45,000 to \$150,000 between 1993 and 2018 (representing a 233 percent gain) and the high school graduation rate is now between 90 and 100 percent (figure 13).¹⁰²

Figure 13: Percentage of Tangelo Park Students Receiving High School Diplomas vs FL Average



Source: Tangelo Park Program Presentation

A 2010 Western Ontario University evaluation of TPP’s benefits on Tangelo Park residents estimated that higher education attainment levels “imply an average increase in lifetime

¹⁰⁰ Tangelo Park Program website - <https://www.tangeloparkprogram.com/about/tangelo-park-program/>

¹⁰¹ Lochner, L., “Measuring the Impacts of the Tangelo Park Program on Local Residents,” University of Western Ontario, December 2010 - https://economics.uwo.ca/people/lochner_docs/measuringtheimpacts_dec10.pdf

¹⁰² Weiss, E., “Tangelo Park Program: A Broader, Bolder Approach to Education,” Economic Policy Institute, 2018 - <http://www.boldapproach.org/case-study/tangelo-park-program-orlando-florida-a-broader-bolder-approach-to-education/>

earnings of \$50,000 per Tangelo Park student, with a total benefit to Tangelo Park residents of \$1.05 million per year...The annual social benefits from crime reduction are estimated to be around \$220,000-300,000. Combining the benefits from both increased earnings and reduced crime suggest that the TPP offers benefits to Tangelo Park residents amounting to around \$1.3 million per year.”¹⁰³ Furthermore, it is estimated that these types of benefits represent a return on investment of \$7 for every \$1 spent and that the \$13 million investment over the course of the TPP’s existence has generated close to \$90 million in benefits for Tangelo Park residents.¹⁰⁴

Seattle Social Development Project

[The Seattle Social Development Project](#) (SSDP) was a longitudinal study created as a partnership between the University of Washington (UW) and Seattle schools in the 1980s. Along with programs such as the [Nurse Family Partnership](#) and [Early Childhood Education for Low Income Students](#), SSDP was rated in WSIPP’s cost-benefit analysis as one having one of the highest measured benefits relative to cost.

Beginning in 1981, SSDP focused on preventing teen health-risk behaviors through the upstream application of a public health model focused on mitigating risk factors associated with juvenile delinquency, violence, substance abuse, teen pregnancy, and dropping out of school.¹⁰⁵ Rather than attempting to address existing problematic behavior in adolescents, SSDP sought to prevent it through early intervention in elementary school (starting in first grade) in an effort to place children on a “developmental trajectory leading to more positive outcomes and fewer problem behaviors over the long term.”¹⁰⁶ SSDP’s underlying theory was that increasing elementary-aged children’s opportunities for forming healthy bonds would demonstrate positive effects in later years.

After randomly selecting “intervention classrooms” from Seattle public schools in high crime areas, researchers worked with educators and parents to implement the program. This consisted of:

- Teacher training in classroom instruction and management,
- Child social and emotional skill development; and
- Parent training and support

Outcomes for children in the intervention groups as well as those in non-intervention control groups were tracked for nearly 30 years. The most recent data, published in March 2021, also looked at whether there were measurable intergenerational impacts that extended to the study participants’ children.

¹⁰³ Lochner, L., “Measuring the Impacts of the Tangelo Park Program on Local Residents,” University of Western Ontario, December 2010 - https://economics.uwo.ca/people/lochner_docs/measuringtheimpacts_dec10.pdf

¹⁰⁴ Tangelo Park Program Presentation, 2020 - https://www.tangeloparkprogram.com/wp-content/uploads/2020/12/Tangelo-Presentation_2020.pdf

¹⁰⁵ Hawkins, J David et al. “Long-Term Effects of the Seattle Social Development Intervention on School Bonding Trajectories.” *Applied Developmental Science* vol. 5,4 (2001)

¹⁰⁶ Ibid.

By the end of sixth grade, which marked the end of the curriculum, intervention students exhibited significantly higher scores on school district-administered standardized tests and reported “higher levels on social development constructs, including positive school opportunities, involvement, rewards, and bonding to school.” At age 18, individuals in the intervention groups reported better academic achievement and fewer incidences of school discipline than individuals in the control group. A significantly fewer amount also reported involvement in criminal acts, heavy drinking, or pregnancy.¹⁰⁷

By age 21, intervention participants had higher levels of constructive engagement in school and work, exhibited greater social integration at school, had higher employment levels, and were significantly more likely to have graduated from high school and attended two or more years of college.¹⁰⁸ In terms of CLS involvement, intervention group participants “were significantly less likely to have sold drugs in the past year and to have experienced a noncriminal, misdemeanor, or felony charge.”¹⁰⁹

As they exited young adulthood, intervention participants continued to show gains relative to their control counterparts. By the age of 27, a larger percentage reported income levels, educational attainment, and homeownership levels that were above the U.S. median. Black individuals, in particular, reported significantly higher income levels relative to the control group (\$55,594 vs. \$35,288).¹¹⁰

Researchers also found that the program’s benefits may have had positive intergenerational impacts for the children of the intervention participants. In surveys, teachers rated the children of the intervention group as exhibiting markedly better cognitive, academic, and emotional skills than children of the control group parents and by age 18, the intervention group’s children also self-reported that they were less likely to have used drugs.¹¹¹

¹⁰⁷ Catalano, RF et al., “Applying the Social Development Model in Middle Childhood to Promote Healthy Development: Effects from Primary School Through the 30s and Across Generations,” *Journal of Developmental and Life-Course Criminology*, March 2021

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

Appendix Links

1. Reimagining the City's Criminal Justice Coordinating Council (CJCC)

2. Relevant Excerpts from Past Community Engagement Efforts

3. Central Staff's 2020 Community Safety & Violence Prevention Memo

4. Seattle Police Department's Response to Statement of Legislative Intent (SLI) SPD-1-B-1