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Introduction

The Seattle City Council adopted Statement of Legislative Intent (SLI) 303-1-A-2 in February 2018 requesting the Seattle Office of Civil Rights, the Seattle City Attorney's Office, Seattle Municipal Court, and the King County Department of Public Defense work together and develop a two-part report to the Chair of the Civil Rights, Utilities, Economic Development, and Arts committee regarding whether and how the City will reform its pretrial bail practices, including but not limited to use of an actuarial tool, use of text-message hearing reminders, and use of unsecured appearance bonds.

In response to the SLI the referenced agencies formed an interdepartmental "Bail Reform" staff workgroup, and this report represents the workgroup's' response to Part 1 of the SLI report, including a survey of pretrial release strategies and tools, best practices associated with these strategies, and comments on potential racial equity outcomes associated with each strategy. Part 2 of the report will be forthcoming in Winter 2018.

Facilitated by the Seattle Office of Civil Rights, the group examined the racialized roots of America's bail system and participated in exercises designed to tease out biases and barriers that remain in the way it functions and is perceived in society today. From this process, we recognized the importance of working with the communities and groups most affected by pre-trial release practices – especially communities of color – to better understand the down-stream effects of the approaches discussed in Part I. We talked about ways to work with existing groups in the community to provide the services and structures that facilitate the goals of pre-trial release, re-appearance in court and community safety. Based on this work, we have requested financial support from the City Council in order to engage communities as we develop racial equity outcomes as part of our efforts to complete Part 2 of the SLI.

Washington is a right to bail state and Article I, section 20 of the state constitution states that criminal defendants "shall be bailable by sufficient sureties" with the only exception being when it involves a capital crime where the punishment is a life sentence. Article I, section 14 of the state constitution prohibits excessive bail. There is a presumption of release on personal recognizance[1], unless the following factors are found by a judicial officer:

- Likelihood of failure to appear OR
- Likelihood of interference with witnesses or administration of justice OR
- Likelihood of committing a violent crime.

Criminal Rules for Court of Limited Jurisdiction (CrRLJ) 3.2(b) states that if failure to appear risk is found, then the court must impose the least restrictive conditions reasonably necessary to assure appearance. The pretrial release strategies described in this report reflect some of the options either currently in use or have been considered in our jurisdiction or other jurisdictions as alternatives to money bail and ease the financial burden of bail on individuals appearing before the Seattle Municipal Court (SMC). Although these strategies may ease financial harms, they may create or perpetuate others.

This report specifically covers the pretrial strategies of text message hearing reminders, electronic monitoring, day reporting, community-based pretrial release strategies, risk assessment tools, and unsecured appearance bonds. SMC currently has an automated phone reminder program and is looking into the technical feasibility of text message hearing reminders. Releasing individuals to community-

[1] See Appendix A for full text of related CrRLJ 3.2 and 3.2.1

based supervision is sometimes permitted by SMC, but outside of Mental Health Court, this strategy is used only on a case-by-case basis and is not part of a consistent, formal agreement.

Methodology / Report Structure

The interdepartmental Bail Reform workgroup is comprised of staff representatives from each department referenced in the SLI. The workgroup started meeting in January to discuss how to best answer the questions posed in Part 1 of the SLI. The workgroup collaboratively identified the six common bail alternative strategies listed above and agreed on a 19-question evaluative framework with which to research and measure each strategy.

The workgroup subsequently divided the strategies and individual departments were responsible for compiling information on each alternative. King County Department of Public Defense researched risk assessments. Seattle Office of Civil Rights researched community-based supervision strategies. Seattle City Attorney's Office researched unsecured appearance bonds. Seattle Municipal Court researched text message hearing reminders, electronic monitoring, and day reporting programs. There are many other strategies that could potentially reduce the harms caused by the City's current use of bail, including updating the current bail schedule. However, capacity and timelines prevented the workgroup from undergoing an exhaustive review.

Each of the departments referenced in the SLI is responsible for a different facet of the criminal justice system, and therefore each section should be understood to only reflect the position of that specific department. Each department has also been given the opportunity to submit a letter to accompany this report, outlining any additional specific comments they have on the strategies included in this report.

Developing Racial Equity Outcomes

As part of the process outlined by SLI 303-1-A-2, the Bail Reform Workgroup intends to develop racial equity outcomes and engage with communities most affected by bail with the intention that this engagement will guide any future reform process. We will use the period between July 31, 2018 and December 21, 2018 to develop these outcomes through the following timeline:

Week of June 11 2018

Workgroup reviews the basic elements of the bail system, including the steps individuals experience from arrest and booking to bond release. Workgroup is working on developing shared principles regarding money bail, developing a racial equity framework and systems analysis to guide their approach to developing racial equity outcomes.

Week of June 18 -Week of July 9 2018

Workgroup reviews quantitative and qualitative data related to bail in King County, with a specific focus on the impact of bail on different racial groups. Based on data, workgroup will identify those communities most impacted by bail for further engagement.

July 2018-October 2018

Based on shared principles and development of a racial equity framework and systems analysis, Workgroup develops racial equity outcomes to guide community engagement efforts.

Workgroup designs engagement plan to work with communities most impacted by bail to better understand the specific impacts our existing bail system has had/continues to have on their lives and their communities. The working group has requested resources from the City Council to support the engagement efforts.

October 2018-December 2018

Workgroup will address the requirements of Part 2 of the SLI, guided by the racial equity outcomes. These requirements are:

- Documentation of the imbedded racialized impacts of bail on communities of color
- Whether LAW and SMC plan to implement bail reform, including use of alternative strategies or tools, and if so, a timeline for reforms;
- A recommended process for community engagement before and throughout implementation of bail reform and documented accountability efforts including feedback loops and evaluations provided to community;
- Estimated savings in jail and court costs; An analysis of unintended consequences that should be addressed before implementation; Any necessary legislative, regulatory, or rule changes needed to implement bail reform; and
- A description of burdens and harms that can be measured and mitigated after any new pre-trial release reforms are implemented.

Text Messaging Hearing Reminders Pretrial Release Strategy

Department Author: Seattle Municipal Court

General Overview of Strategy

Criminal defendants at Seattle Municipal Court receive paper hearing summons either through the mail or in person after their court appearance. Courts around the country are using several methods to remind defendants of their upcoming court dates ranging from post card reminders, automated calls, live person calls, and text messaging reminders.

Defendants who do not appear for their scheduled court date will often have a warrant issued for their arrest. If text messaging reminders can improve the appearance rate of criminal defendants, then several benefits will be realized ranging from less warrants issued, cases resolved faster, and reduction of jail costs.

Population Eligible for Strategy

According to Pew Research Center[2], 95% of Americans own cellphones and 77% owned smartphones in 2015. 92% of lower income Americans (<30k annually), 98% of people under the age of 30 and 96% of people living in urban communities own cell phones.

The Court Resource Center (CRC) has a program for free cell phones through called the Lifeline Assistance program with Assurance Wireless as the provider.

The Lifeline Assistance program is available for one wireless or wireline account per household. Residents with temporary addresses are also eligible.

A person may qualify for the Lifeline Assistance program if they participate in any of the following public assistance programs:

- Food Stamps/SNAP
- Medicaid
- Supplemental Security Income (SSI)
- Federal Public Housing Assistance or Section 8
- Veterans Pension benefit or Survivors Pension benefit
- Household income at or between 135% of Federal Poverty Guidelines for 2018

[2] http://www.pewinternet.org/fact-sheet/mobile/

This program is available on Wednesday's at the Court Resource Center and days that they are not in the office there are alternate locations to refer them to.

How it addresses public safety and court appearance

Text hearing reminders have been shown to reduce failure-to-appear (FTA) rates for defendants at criminal hearings resulting in fewer arrest warrants being issued. This tool could also be utilized for other court obligations like probation appointments that would help ensure compliance with court orders. The current FTA rate at Seattle Municipal Court across all criminal case types and hearings is roughly 9%. For a high volume Court like Seattle Municipal, even a small reduction in the FTA rate would mean a large reduction in warrants and large increase in defendants appearing for their court appearances.

Review of other Jurisdictions Implementing Strategy and Strategy Evaluations

a. Does Seattle Municipal Court currently use strategy?

Seattle Municipal Court does not currently use this strategy but has undertaken efforts to start scoping a text message reminder project with their Court Technology department and Seattle IT. Seattle Municipal Court currently utilizes a call reminder program for criminal hearings. In the current call reminder program, defendants on criminal cases receive an automated voice call two days before their hearing with a reminder of their court date.

a. Location / jurisdiction where strategy is implemented.

Orange County, California.
King County Superior Court, Washington.
New York City, New York.
Spokane County, Washington.
Durham County, North Carolina.
Hennepin County, Minnesota.

b. Description of population using strategy. Include data, where available.

A 2014 program in New York City found that text message reminders cut their failure-to-appear (FTA) rates by 26%.[3] A 2018 study in Hennepin County (Minneapolis), Minnesota, found that their text reminder program reduced FTA rates by 24%.[4]

[3] http://www.ideas42.org/new-text-message-reminders-summons-recipients-improves-attendance-court-dramatically-cuts-warrants/
[4] http://napco4courtleaders.org/2018/02/hennepin-county-mn-district-court-ereminder-system-cuts-failures-to-appear/

c. How much does the tool cost jurisdiction to implement and/or maintain?

King County Superior Court recently implemented a pilot program with a vendor called Grancius through their Textizen software at an annual cost of $16,649 for up to 500,000 text messages. Implementation of a hearing reminder program would also require new software development at Seattle Municipal Court. The length, cost and scope of this effort has not fully been determined. The court may be able to partner with Seattle IT for these services and avoid using a vendor.

Potential Racial Equity / Community Engagement Outcomes[5]

a. Who administers strategy. (Court, Community partner, Other?)

The Court would administer this strategy.

b. Does the strategy involve supervising or surveilling individuals?

This strategy would involve the Court collecting cell phone numbers from defendants which is not a current practice, but not for the purposes for supervising or surveilling them. Defendants would need to opt into text messaging reminders in part because some older cell phone plans charge for individual text messages. Defendants with privacy concerns could opt out of text messaging reminders.

c. Who benefits financially from strategy?

There could be a reduction in warrants and jail costs so there could be cost benefits to different areas of the criminal justice system.

d. Is tool designed to, or has tool impacted racial disproportionality in pretrial confinement population?

No research to determine this was able to be found.

e. **What community collaboration is available for strategy implementation**?

Potential ideas for community collaboration would involve surveying participants, providing the opportunity for defendants who receive free phones from the Community Resource Center to comment on their experience with text reminders and also to track the percentage of defendants who opt out versus opt into this service.

Electronic Monitoring Pretrial Release Strategy

Department Author: Seattle Municipal Court

General Overview of Strategy

Electronic Monitoring (EM) are strategies that use ankle bracelets and other electronic tracking devices to monitor the physical location of defendants, and in some instances their behavioral choices, like consuming alcohol.

There are two common forms of tracking devices. Global Positioning Systems (GPS) can continuously track a defendant's location and transmit the information to monitoring centers in real time. Nationally, GPS monitoring is common in sex offense or domestic violence cases, where they can be used to create exclusion zones, where a defendant is not permitted to travel. Radio frequency (RF) devices monitor a defendant's presence in a fixed location. They are typically used to monitor defendants on house arrest, who have been ordered to remain in a particular location, at specific times of day. RF systems consist of battery powered transmitters, typically ankle bracelets, that communicate with home-based receivers that in turn communicate with off-site monitoring centers that alert jurisdictions of violations. Some RF technologies also allow for alcohol monitoring and communicate a defendant's level of sobriety in the same fashion the device communicates physical location information. It is worth noting that while EM can create exclusion zones or monitor alcohol use and notify of violations, there is not necessarily an immediate response by police departments or courts to alleged violations. Notification and violation review procedures are complex and vary by jurisdiction.

Population eligible for strategy

Electronic Monitoring (EM) is being used in all 50 states, the District of Columbia, and by the federal government.[6] This analysis tries to isolate findings to pretrial EM, where defendants have been arrested, but not convicted of a crime. However, EM is used widely in the probation, parole, juvenile, and immigration systems.

How it addresses public safety and court appearance

In Washington State, Article I, section 20 provides that criminal defendants "shall be bailable by sufficient sureties", except if the charge is a capital crime or is punishable by possibility of lifetime incarceration. In 2002, Criminal Rule (CrR) and Criminal Rule for Limited Jurisdictions (CrRLJ) were amended to establish that there is a presumption of pretrial release unless a judicial officer finds:

- Likelihood of court nonappearance
- Likely interference with witnesses or administration of justice
- Likely commission of a violent crime

[6] http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/09/use-of-electronic-offender-tracking-devices-expands-sharply

When evaluating an defendant's eligibility for release, if a judicial officer finds likelihood of nonappearance at court, CrRLJ 3.2(b) requires the least restrictive of a number of release conditions, including EM. If a judicial officer finds substantial risk of violent re-offense or interference with justice, CrRLJ 3.2(d) allows for a number of release conditions, including EM.

EM addresses court appearance by proving the court a method to assess the location of defendants released from custody. EM addresses public safety by restricting defendants to certain locations at certain times of day, and in some case monitoring whether an defendant is using alcohol. For example, defendants charged with driving-under-the-influence (DUI) are permitted to go to work daily, however may not leave their residence at night, theoretically decreasing their driving opportunities, and sometimes simultaneously being monitored to see if they are complying with an abstain from alcohol conditions.

Review of other Jurisdictions Implementing Strategy and Strategy Evaluations.

a. Does Seattle Municipal Court currently use strategy?

Currently Seattle Municipal Court (SMC) contracts with Sentinel Offender Services to provide EM services. SMC rarely orders full house arrest monitoring, but instead allows defendants to travel outside the home for work, school, medical appointments / treatment, church, grocery shopping, laundry services, benefit assistance, and any other court-ordered appointment.

SMC relies on EM services both during pretrial and post-conviction stages of a defendant's case. The remainder of this section pertains to SMC's use of EM in pretrial settings.

SMC generally uses Sentinel Offender Services for electronic home monitoring (EHM), alcohol monitoring, or a combination of both services. A more complete description of the EM services SMC uses is listed below.

1. **Electronic Home Monitoring (EHM):** A radio frequency enabled ankle bracelet is placed on a defendant and tethered to a home monitoring unit. The home monitoring unit communicates location information back to a monitoring center, 24 hours a day.
2. **Breath Alcohol Real-Time (BART):** A remote portable device that randomly prompts a defendant to submit breath tests. The device measures blood alcohol and confirms authenticity of test with a camera that takes a photo of the defendant providing the test and maps the test location.
3. **Continuous Transdermal Alcohol Monitor (SCRAM):** An ankle bracelet that captures alcohol readings through sweat excretion every 30 minutes. Bracelet stores data and transmits via RF to base station when client is within range or returns home.
4. **EHM w/ Breath Testing:** - Used when SMC wants a client not only confined to their home, but also wants a client to abstain from alcohol. Client is provided a RF ankle bracelet and a BART device or a Micro Electric Monitoring (MEM) unit.

Sentinel also offers GPS monitoring services, but to-date SMC has chosen to not regularly implement this form of EM into its court monitoring practices to respect defendant privacy interests.[7]

b. Location / jurisdiction where strategy is implemented.

Seattle Municipal Court uses all four of the EM services listed above in pretrial settings.

Other Washington State jurisdictions known to utilize pretrial EM include King County District Court, Spokane Municipal and Spokane County Courts, Yakima Municipal and Yakima County Courts, and Pierce Country Courts. Pretrial EM is common across the country, with a few examples existing in Washington D.C's pretrial service agency, Hennepin County, Minnesota and Maricopa Country, AZ.

c. Description of population using strategy. Include data, where available.

The following chart displays the average weekly number of defendants at SMC assigned to each of the strategies listed above[8].

Type of EM	2017 Weekly Average	2018 Weekly Average
Pretrial EHM	7	1
Pretrial SCRAM	31	24
Pretrial BART	14	8

For comparative purposes, in 2017 the weekly average number of defendants with SMC cases held pretrial or with pending warrants in King County Jail was 161[9]. Extrapolating the data suggests roughly 4% of pretrial defendants were ordered to EHM, 19% to SCRAM, and 9% to Bart respectively.[10]

Most defendants assigned to any type of pretrial EM at SMC are for DUI cases. For example, the week of 4/23/18 had 37 out of 39 or 95% of defendants currently assigned to EM, with pending DUI cases. The other two cases were domestic violence matters.

The chart below shows a demographic comparison of all criminal defendants at SMC, SMC defendants charges with DUI violations, and defendants assigned EM monitoring. Data is compiled for 2017 and 2018 to-date.

[7] The court ordered GPS monitoring on three cases filed in 2016 and has not used this type of monitoring since that time.

[8] The chart does not distinguish between EHM and EMH with BART testing.

[9] SMC cannot break out the weekly average confinement data further from defendants held pretrial and defendants who may be pre- or post-disposition but have been booked on an outstanding warrant.

[10] Because the court can't break out the pre- and post-sentence warrant population in KCJ, these percentages are likely slight overestimates, as some portion of warrant bookings are for post-disposition violations.

2017 - 2018 Defendant Demographics at SMC	Asian / Pacific Islander	Black	Native American / Alaska Native	White	Unknown
All criminal defendants	6.9%	27.0%	2.6%	57.6%	5.6%
All defendants with a DUI case	8.1%	17.3%	1.2%	65.1%	8.3%
All defendants assigned EM	6.8%	20.3%	2.3%	65.3%	5.2%

Unfortunately, the court is limited in the available demographic data contained in its case management system and cannot report aggregate data on ethnicity, or whether a defendant identifies as Hispanic.[11]

d. How much does the tool cost jurisdiction to implement and/or maintain?

SMC's contract with Sentinel is a no-cost contract, meaning the court and the city pay nothing for the services. Defendants ordered to monitoring bear the costs of these services. The chart below identifies the daily cost for each monitoring strategy. The court recently renegotiated the rates with Sentinel Offender Services and a comparison of the 2017 versus 2018 rates is provided in the table below.

[11] SMC's demographic information comes from what is reported by Seattle Police Department and Seattle City Attorney's Office and is subject to similar data limitations.

DEVICE	2017 Fee Structure	2018 Fee Structure
EHM ONLY (LANDLINE)	SLIDING SCALE: $6/DAY FOR LOWEST EARNERS, TO $26/DAY FOR EARNERS ABOVE $26/HOUR.	SLIDING SCALE: $5.40/DAY FOR LOWEST EARNERS TO $16.45/DAY FOR EARNERS ABOVE $18.01/HOUR.
EHM ONLY (CELLULAR)	SLIDING SCALE: $8/DAY FOR LOWEST EARNERS, TO $26/DAY FOR EARNERS ABOVE $26/HOUR.	SLIDING SCALE: $7.20/DAY FOR LOWEST EARNERS, TO $18.25/DAY FOR EARNERS ABOVE $18.01/HOUR.
EHM W/BREATH	ADD $3.50/DAY	ADD $3.00/DAY
COURT DESIGNATED INDIGENT EHM/BREATH	$6.50/DAY	$6.50/DAY
COURT DESIGNATED INDIGENT	$3/DAY	$3/DAY
BART	$8/DAY	$6/DAY
BART W/EHM (LAND ONLY)	$12/DAY	W/LANDLINE: $8.50.
COURT DESIGNATED INDIGENT LANDLINE BREATH ONLY	N/A	$3.50
SCRAM ONLY	$12/DAY	$9/DAY
SCRAM WITH EHM (LANDLINE ONLY AVAILABLE PRIOR)	$12/DAY	W/LANDLINE RF: $9/DAY. W/ETHERNET: $9.50/DAY. W/CELL: $10.50/DAY.
5% FREE SLOTS ALLOTED TO DEF WITH ESTABLISHED INABILITY TO PAY	FREE	FREE

One critique of EM in pretrial settings is that users are asked to bear the cost of the service. According to the Pretrial Justice Institute, “Charging legally innocent people to be monitored electronically has the same flaw as secured money bond: it discriminates based on wealth and creates a heavier burden for those with limited means.”

Seattle City Council previously provided roughly $200,000 annually to fund EM services at SMC so defendants would not have to bear these costs, however this funding was cut in the court’s 2009 budget.

To counter this impact, Seattle City Council allocated SMC $43,800 in SMC’s 2018 budget as a demonstration project to subsidize the cost of EM services for indigent defendants, who Judges would assign to EM rather than incarceration, but for whom the current cost is too high. In some cases, the court also assigns indigent DUI defendants who might otherwise be candidates for EM to presentence urinalysis submissions, as a no-cost method to monitor alcohol use.

e. Are there published evaluations on strategy? If yes, summarize findings.

f. Do evaluations publish any outcome data on strategy.[12]
g. Are there evidence-based practices published to guide implementation?
h. Are there reasons strategy would have outcomes consistent or inconsistent with published evaluations here in Seattle? (demographics, legal limitations, etc.)

Despite how common EM technologies are both in Washington State and across the country, there are limited recent evaluations of their efficacy in pretrial settings. The following are three studies that offer some evidence on the effectiveness of EM and best practices associated with their use in pretrial settings. For each of the three studies, the title of the study, the source, and a very brief description of the findings are provided.

Evaluation Title: State of the Science of Pretrial Release Recommendations and Supervision
Source:http://www.pretrial.org/download/research/PJI%20State%20of%20the%20Science%20Pretrial%20Recommendations%20and%20Supervision%20(2011).pdf
Evaluation Results: This report summarized findings from research on the efficacy of a number of pretrial release strategies. Relying on findings from pretrial EM studies conducted in Mesa County, AZ, Lake County, IL, Marion County, IN, and U.S. Federal Probation (17 locations across country), this report concluded the following:
"Utilizing EM as a condition of pretrial release does not reduce failure to appear or rearrest" however the hypothesis that "providing EM as a condition of pretrial release has the potential to reduce unnecessary detention for higher-risk defendants while maintaining court appearance and community safety" needs more research to test its validity.

Evaluation Title: Benefit – Cost Estimate of Electronic Home Monitoring (Probation)
Source: http://www.wsipp.wa.gov/BenefitCost/ProgramPdf/437/Electronic-monitoring-probation
Evaluation Results: In 2016, the Washington State Institute of Public Policy conducted a cost-benefit analysis of EM, to determine if the monetary benefits of EM exceed its cost. This analysis is done using a "meta-analysis includes studies on defendants who were on probation with electronic monitoring. They were compared to similar defendants who received intensive supervision, parole, continuation of sentence, or home confinement without electronic monitoring." Their analysis suggested that the Washington State Department of Corrections could expect $15,035 per participant benefit of EM. It is important to note that this finding does not examine EM in a pretrial misdemeanor setting and it only examines financial benefits. Thus, it has limited applicability to SMC pretrial EM services.

Evaluation Title: Electronic Monitoring: Proceed with Caution
Source: http://www.pretrial.org/electronic-monitoring-proceed-caution/
Evaluation Results: This article is not a formal evaluation of pretrial EM, but rather a summary of findings from other research, and then a listing of recommendations to improve the use of EM in pretrial settings. These recommendations include the following:

- EM conditions and the device itself can create the same harms as incarceration[13]
- EM should not be used as an extra layer of "security" for people who are inclined toward pretrial success
- Additional research is needed to further understand EM in the pretrial context
- Data should be collected to identify and correct possible patterns of bias or misuse of EM
- "User-funded" models of EM are inappropriate

Potential Racial Equity / Community Engagement Outcomes

a. Who administers strategy. (Court, Community partner, Other?)

Currently the court orders defendants to EM. The different technologies that encompass EM is provided by Sentinel Offender Services, a third-party vendor.

b. Does the strategy involve supervising or surveilling individuals?

Yes, defendants are both supervised and surveilled with EM technology. Reports and responses to violations are not issued in real time, nor do police respond immediately to alleged EM violations.

c. Who benefits financially from strategy?

The EM contract is a no cost contract to the City. If defendants assigned to EM would otherwise remain in jail in the absence of such a monitoring option, then the City could potentially benefit financially by not incurring jail bed costs. However, given the structure of the current contract between the City and King County for incarceration services, there is not a direct relationship between the number of defendants incarcerated and the City's financial expense.[14]

If defendants assigned to EM would otherwise remain in jail in the absence of such a monitoring option, and are able to maintain employment, and would not have done so if incarcerated, then defendants also benefit financially from EM. However, currently many defendants are asked to pay for EM, so some portion of this potential financial benefit is offset by the cost of EM. Another benefit for defendants is the ability to maintain access to benefits and housing that could be lost if they were incarcerated for some length of time.

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[13] *Electronic Monitoring: Proceed with Caution* EM recommendations on the assumption of full house arrest monitoring. As mentioned above, SMC judges rarely order this level of monitoring, but instead allow for defendants to leave to travel outside the home for work, school, medical appointments / treatment, church, grocery shopping, laundry services, benefit assistance, and any other court-ordered appointment.

[14] Under the current contract, the City pays for a flat number of beds at King County Jail, regardless of utilization. The City has been consistently well below this threshold in 2018.

Sentinel Offender Services is a for profit company, therefore one assumes it makes money by providing these services.

d. Is tool designed to, or has tool impacted racial disproportionality in pretrial confinement population?

It is unclear how the tool has impacted racial disproportionality in the pretrial confinement population. The chart above providing a demographic comparison of defendants assigned EM compared to the overall defendant population suggest 7% less Black defendants receive EM than the total defendant population at SMC, however 3% more Black defendants are assigned to EM, than the percentage of Black defendants who acquire DUI-related charges. As stated earlier, SMC uses pretrial EM almost exclusively on defendants charged with DUI.

e. What community collaboration is available for strategy implementation?

SMC is unaware of community collaboration resources available for EM services but is open to engaging in conversations around how to effectively administer EM strategies at the court.

Day Reporting Pretrial Release Strategy

Department Author: Seattle Municipal Court

General Overview of Strategy

Nationally, day reporting programs vary greatly regarding program objectives, the types of cases assigned, the types of activities defendants must engage in, and day reporting is used as a presentence jail alternative or a post-sentence sanction.

Generally, day reporting centers require defendants to report to the facility multiple times each week. Defendants are supervised and also provided opportunities to connect with services, such as counseling, educational courses, employment training, and referrals for additional assistance.[15] Day reporting can take on different forms including phone-in and/or in-person reporting, and may include only short contact sign-in or intensive treatment.

Description of population eligible for strategy

Eligibility for pretrial day reporting is determined based on whether a person has had a poor history of compliance with the court/failure to appear. Judges determine eligibility for bail as well as Day Reporting based on factors laid out in Washington Court Rule 3.2 which directs judges to consider…

> "*the accused'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;…*"

How it addresses public safety and court appearance

According to CrRLJ 3.2, Judges make release decisions based on: public safety risk, likelihood of interference with the administration of justice, and likelihood of appearance at future hearings.

Day reporting seeks to addresses court appearance by providing the court a mechanism to require regular contact with the defendants released from custody. Pretrial day reporting addresses public safety by using this regular contact at day reporting between counselors and defendants released to foster accountability.

[15] Day reporting centers Adult Criminal Justice Benefit-cost estimates updated December 2017. Literature review updated October 2016.http://www.wsipp.wa.gov/BenefitCost/ProgramPdf/502/Day-reporting-centers

Review of other Jurisdictions Implementing Strategy and Strategy Evaluations

a. Does Seattle Municipal Court currently use strategy.

SMC offers pretrial day reporting as an alternative to jail. The program has three primary goals; support defendant's goal of reappearance at future court hearings, discuss ways to connect defendants to social services, and monitor pretrial conditions of release. Defendants are required to report on a set schedule, between one and five days per week, Monday to Friday, until their court date, or until their court ordered obligation is complete.

SMC day reporting is based on the second floor of the courthouse within the Court Resource Center. This allows for potential contact and exposure with additional opportunities and connections to a range of services from food and clothing to benefits enrollment.

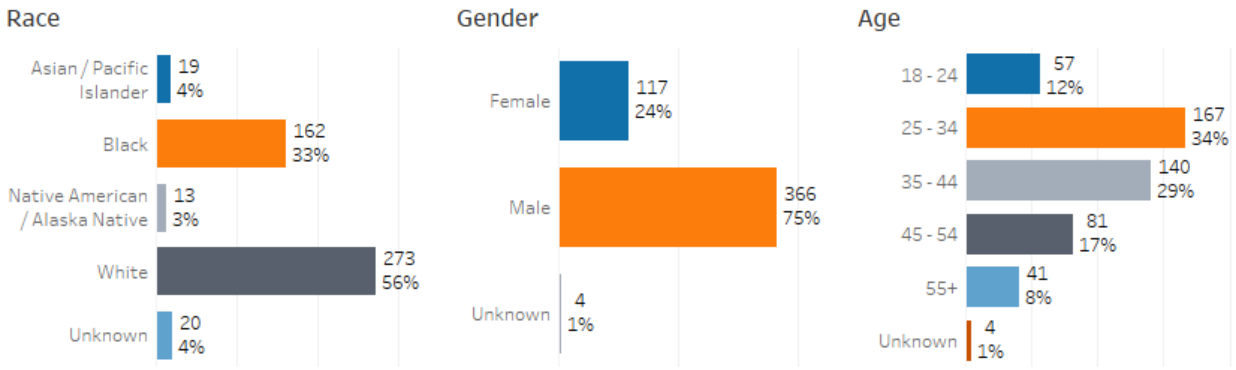
SMC currently offers in-person day reporting and does not have phone-in day reporting.

b. Location / jurisdiction where strategy is implemented.

Seattle Municipal Court uses day reporting in pretrial settings. Other jurisdictions with day reporting centers are listed in the appendix of this document.

c. Description of population using strategy. Include data, where available.

Since June 2017 the pretrial day reporting population at SMC comprised of 487 misdemeanant defendants (with 630 cases), who typically (83%) have non-DV, non-DUI charges (e.g. theft or criminal trespass). 75 percent of defendants are male and 34 percent are between the ages of 25-34. The racial breakdown of defendants, gender, and age demographic data is provided in the chart below.[16]



[16] For comparison purposes the total defendant population demographics at SMC are as follows: Asian/Pacific Islander 6.9% , Black 27%, Native American/Alaska Native 2.6%, White 57.6%, Unknown 5.6%.

In terms of reporting frequency, the largest percentage of defendants report twice per week (45%) with the second largest group reporting three times per week (28%). 13 percent of defendants report five times per week, one percent report four times per week, and 14 percent report once per week. Approximately 37 percent of defendants engaged in day reporting have previously been involved with Day Reporting while 62 percent have not previously been assigned to Day Reporting.

d. How much does the tool cost jurisdiction to implement and/or maintain?

The total 2017 cost of staff associated with SMC presentence day reporting is $251,823. This accounts for three staff members who work in the pretrial SMC Day Reporting Center.

e. Are there published evaluations on strategy? If yes, summarize findings.

It is difficult to find evaluations on the effectiveness of day reporting programs in part because program models vary so widely. Some evaluation information is listed below, but first we want to highlight the differences in many of the programs across the country.

Listed in Appendix A is a sample of other day reporting (or pretrial supervision) programs. . This information is summarized from program websites. It is important to note these programs vary greatly in the type of defendants served. Some have misdemeanor populations, others have felony populations, and some have both. Many jurisdictions use day reporting in pre-trial and post-conviction settings.

All these programs use some form of interview to determine eligibility for pretrial supervision, with four jurisdictions specifically using a risk/needs assessment. Every program requires some type of check-in supervision ranging from a sign-in or phone-in reporting to full pretrial services requirements including classes, therapy, or moving through levels of supervision. Some programs require an enrollment fee (2 jurisdictions), or mandatory drug testing (4 jurisdictions).

Nearly half of the programs attempt to connect defendants to social service providers". Some models include day reporting at the court building, while other models run the program from a separate building.

f. Do evaluations publish any outcome data on strategy.[17]
g. Are there evidence-based practices published to guide implementation?
h. Are there reasons strategy would have outcomes consistent or inconsistent = wit published evaluations here in Seattle? (demographics, legal limitations, etc.)

The literature on day reporting centers is mixed. A December 2017 Washington State Institute for Public Policy benefit-cost analysis of day reporting centers found that the benefits of the programs exceeded initial investment after six years. The benefits of a day reporting center per person is assessed to be $3,949 with a 76% chance that programs will produce indirect benefits greater than the costs.[18] It is worth noting this was a meta-analysis of many studies that examined a wide variety of day reporting programs.

A publication on New York City's Supervised Release Program provides some insight on the effectiveness of pretrial day reporting[19]. This research indicates:

- Participants in the supervised release program (who complete a risk/needs assessment upon entry to the program) were released for longer in the pretrial period, spent fewer days in pretrial detention, and were less likely to receive a conviction and less likely to receive a jail sentence at the end of their case.
- Participants were more likely to be issued a Failure to Appear (FTA) warrant than the general comparison group, but results were identical when compared to a released population at similar risk for FTA.
- There was no significant difference between groups regarding re-arrest at one and two years post-sample. It should be noted that the Supervised Release participants were in the community longer than their counterparts.
- The program completion rate was 72% with completers more likely to be male, Black and report some type of social support (being in a relationship, having family, receiving behavioral health services).

One final evaluation reviewed was a pretrial release report issued by the Pretrial Justice Institute (PJI) reviewing a number of studies[20]. PJI found that across the country, there is a lack of standardization as to what is 'pretrial supervision' and supervision requirements vary widely. Further, that these differences can create different program outcomes. Two of the three studies PJI identified found that variations in frequency and type of contact may have no impact on failure to appear or re-arrest rates, while the third study found that supervision substantially lowered FTA and re-arrest rates. PJI concluded that:

- Using alternatives to detention as conditions of pretrial release for the appropriate defendant population can reduce unnecessary detention while assuring court appearance and community safety.
- Evidence-based interventions directed towards offenders with a moderate to high-risk of committing new crimes result in better outcomes for both offenders and community. Conversely, treatment resources targeted to low-risk offenders produce little, if any, positive effect. The key exception noted is mental health treatment, which, when appropriate, is beneficial regardless of risk.

[18] Day Reporting Centers Benefit-cost estimates. Washington State Institute for Public Policy.

[19] An Experiment in Bail Reform: Examining the Impact of the Brooklyn Supervised Release Program By Josephine W. Hahn Center for Court Innovation

[20] State of the Science of Pretrial Release Recommendations and Supervision National Institute of Corrections Pretrial Justice Institute. https://nicic.gov/state-science-pretrial-release-recommendations-and-supervision

- Overall it "must be acknowledged that research in this area is very limited and substantially more research is needed."

Potential Racial Equity / Community Engagement Outcomes

a. Who administers strategy. (Court, Community partner, Other?)

SMC currently administers the day reporting program. It is located within the SMC Court Resource Center, on the second floor of the Seattle Justice Center.

b. Does the strategy involve supervising or surveilling individuals?

Yes, day reporting involves supervising defendants by monitoring whether they report to the courthouse and attend future court hearings.

c. Who benefits financially from strategy?

If defendants assigned to day reporting would otherwise remain in jail in the absence of such a monitoring option, then the City could potentially benefit financially by not incurring jail bed costs. However, given the structure of the current contract between the City and King County for incarceration services, there is not a direct relationship between the number of defendants incarcerated and the City's financial expense.

If defendants maintain financial ties in the community (jobs, paying bills, accessing benefits) due to the less restrictive nature of day reporting as compared to jail, than the defendant benefits financially. If the burden of reporting to the courthouse multiple times per week is costly, inconvenient, or interferes with employment, then defendants could be negatively impacted by the program.

d. Is tool designed to, or has tool impacted racial disproportionality in pretrial confinement population?

It is unclear how the tool has impacted racial disproportionality in the pretrial confinement population. The SMC demographic information provided above suggest that 3% more Asian/Pacific Islander defendants, 5% more Black defendants, and a nearly identical percentage of White and Native American/Alaska Native defendants are assigned to day reporting when compared with the total defendant population at SMC.

e. What community collaboration is available for strategy implementation?

SMC is not currently aware of community collaboration resources available for Day Reporting but is open to discussions with criminal justice stakeholders and community about how to most effectively utilize its day reporting program.

Appendix A: List of other jurisdictions operating Day Reporting or Pretrial Supervision Centers

King County, WA

Community Center for Alternative Programs (CCAP) is located on the first floor of the Yesler Building in Seattle. It was formerly King County's day reporting program. It is designed to hold offenders accountable to a weekly itinerary directed at involving the offender in a continuum of structured programs. The goal of CCAP is to assist offenders in changing those behaviors that have contributed to their being charged with a crime. CCAP provides on-site services as well as referrals to community-based services. Random drug tests are conducted to monitor for illegal drug use and consumption of alcohol. Offenders participating in CCAP receive an individual needs assessment and are scheduled for a variety of programs[21].

Pierce County, WA

A district court judge and/or court staff may refer defendants for day reporting days in lieu of jail time or to pay court fines. An alternative to jail and court fines that offers defendant's practical living skills that are based primarily on a cognitive-behavioral approach, the program rotates with a six-week curriculum.

- Orientation appearance is mandatory.
- The $35 program fee is mandatory, or an extra day is added to account for the fee.
- Credit for 24 hours of jail time is given for eight hours of class time and a $150 credit toward fines is given for eight hours in the classroom. [22]

District of Columbia

The Washington D.C. Day Reporting Center (DRC), is an on-site cognitive restructuring program designed to change an offender's adverse thinking patterns, provide education and job training to enable long-term employment, and hold unemployed offenders accountable during the day[23].

The goals of the Day Reporting Center are to reduce offender rearrest, assist offenders in successful reentry by providing needed services, and increase public safety by holding offenders accountable. Courses are provided at the center including:

- Self-Awareness
- Life Skills
- Family Dynamics
- Substance Abuse
- Domestic Violence
- Victimization
- Volunteerism
- Entrepreneurship
- GED preparation
- Certificate in Home Repair
- Financial Management
- Introductory Computer Skills

[21] https://www.kingcounty.gov/depts/jails/community-corrections/programs.aspx
[22] http://www.co.pierce.wa.us/878/Day-Reporting-Program
[23] https://www.csosa.gov/supervision/programs/day_reporting_center.aspx

New York City, NY

Supervised release serves defendants charged with a non-violent felony or misdemeanor offense (excluding domestic violence), who might otherwise be detained pretrial or remanded without bail. Participants also must be deemed eligible by the Mayor's Office of Criminal Justice's pretrial risk assessment tool and agree to abide by the program's supervision terms.

With the consent of defense counsel, program staff speak with defendants to explain the program. If program staff can verify contact information, defense counsel may request supervised release as an alternative to pretrial detention. The presiding judge will then decide whether the person is released to supervised release instead of bail being set.

Supervision consists of in-person meetings and phone call check-ins ranging in frequency from once a month to once a week. The level of supervision is assigned to participants based on their probability of committing a new offense while awaiting trial. Each participant receives a supervision schedule from their social worker. Social workers then schedule face-to-face and phone/electronic contact appointments, and make voluntary referrals to community-based services (such as vocational/employment services, mental health, substance abuse, and educational services).[24]

Denver, CO

Denver's Pretrial Services program determines a defendant's eligibility to be released from jail before trial and provides essential information and recommendations to the court relative to bond and release conditions. Every defendant released to pretrial supervision is required to attend meetings with their pretrial officer. The frequency of these meetings depends on the level of supervision required and can involve toxicology screenings, or various types of EM including GPS and SCRAM.[25]

Salt Lake City, UT

Pretrial Services provides supervision for both misdemeanor and felony defendants. Pretrial supervises defendants who have been released under specified conditions. These conditions include requiring a defendant to report in regularly, undergo drug or alcohol testing and / or treatment, and / or be monitored electronically. Pretrial case managers monitor compliance with conditions of release and report defendant's progress and/or violations to the court.[26]

[24] https://www.courtinnovation.org/node/20042/more-info

[25] https://www.denvergov.org/content/denvergov/en/department-of-safety/alternative-corrections/community-corrections/pretrial-supervision-services.html

[26] https://slco.org/criminal-justice/pretrial-services/Pretrial-Supervision/

Unsecured Appearance Bonds Pretrial Release Strategy

Author: Seattle City Attorney's Office

General Overview

According to a 2015 study published by the National Association of Counties (NACo), counties own 84% of all local jail facilities in America, and 67% of the jail population are people who have been detained pretrial before any adjudication or conviction of a crime.[27] In King County, the number of detainees held pretrial is 77% in 2018 according to a presentation given to the Washington state Pretrial Reform Taskforce: Data Subcommittee.[28] The current money bail system in most counties primarily uses bail schedules or financial conditions that guide pretrial release decisions by setting a dollar amount based on the charge against the defendant. Thus, defendants with the money to make bail can fund their release from jail while those defendants without funds remain in jail.[29]

The purpose of this report is to consider alternatives to the money bail system, and to move us away from over-reliance on a money bail system that disproportionately impacts communities of color and poor people. Jurisdictions across the nation are grappling with the three foundational questions of pretrial release: 1) whom should we release; 2) whom should we detain, and 3) how should we do it. The current reform movement is inspiring jurisdictions to move from systems in which money determines release to a system in which judges make intentional and un-hindered release and detention decisions.

An Unsecured Appearance Bond is a type of bail in which the accused makes a written promise to appear in court. The bond will also contain the accused's unsecured promise to pay a specified sum of money if the accused fails to appear as required. Generally, an unsecured appearance bond is used when there is little reason to believe than an accused will not appear as required. It is an alternative to personal recognizance.[30] The unsecured bond is an agreement between the court and the defendant while the secured bond typically involves a bail company that takes 10% of the amount of the bond as a non-refundable fee to post the bond on the defendant's behalf to earn the defendant's release. In contrast, a secured bond requires money to be posted with the court on the accused's behalf prior to pretrial release.[31]

There is a spectrum of alternative forms of cash bail and two important distinctions. The first distinction is between surety vs. appearance bonds.

- **Surety bond** – requires the payer or obligor (someone other than the accused) to pay;
- **Appearance bond** – requires the accused to be the sole person paying the bond

The second distinction is between secured, partially secured, and unsecured bonds.

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[27] http://www.naco.org/articles/pretrial-population-and-costs-put-county-jails-crossroads-0

[28] Pretrial Reform Taskforce: Data Subcommittee presentation by DRS. Jacqueline VanWormer and Andrew Peterson February 28, 2018.

[29] *Id.*

[30] https://definitions.uslegal.com/u/unsecured-appearance-bond/

[31] *Id.*

- **Secured bond**- requires those responsible for the bond to deposit personal or real property with the court;
- **Partially secured bond**- requires a money deposit of no more than 10% of the bond, although the judge may set a lesser amount;
- **Unsecured bond** – in contrast requires no deposit of either money or property but simply a promise to be liable for the full amount of the bond if the person fails to appear at the subsequent court dates and bail is forfeited.

An unsecured appearance bond either sets no bail at all, or sets bail at a certain amount but only requires the defendant to pay the amount if he or she fails to appear for future court dates. The main difference with a money cash bail system, which is a secured appearance bond, is that the defendant is required to pay or pledge a certain amount upfront, with a later refund or voiding of the pledge, in order to incentivize the defendant to appear in court and comply with the conditions of pretrial release.

There are three types of release using Unsecured Appearance Bonds:[32]

- **Release on Personal Recognizance**. The defendant signs an appearance bond, with no bail set. Other conditions may be imposed. OR
- **Release to the Custody of a Third Party** who becomes responsible for assuring the defendant's appearance and compliance with all conditions. The defendant signs an appearance bond and agrees to remain in the custody of a Third Party. The Third Party agrees to supervise the defendant and report any violation of the conditions of release to the court. No bail is set. Other conditions may be imposed. OR
- **Release on an Unsecured Appearance Bond**. The defendant signs an appearance bond and the court sets the amount of bail but does not require a cash deposit or pledge of property. Other conditions may be imposed.

Population eligible for strategy and how it addresses public safety and court appearance

The Washington State Constitution requires release of the defendant on his/her personal recognizance or an unsecured appearance bond and courts are required to impose the least restrictive conditions. Washington is a right to bail state and there is a presumption of release, unless such release will not reasonably ensure the defendant's appearance in court, the safety of another or the safety of the community. CrR 3.2(b) and CrRLJ 3.2(b) states that if failure to appear risk is found, then the court must impose the least restrictive conditions reasonably necessary to assure appearance.

This strategy is available to anyone who is eligible, but most likely defendants who are not considered to be violent or public safety risk and do not have a failure to appear history. Because unsecured appearance bonds are similar to personal recognizance (PR) bonds, the same criteria for determining when to PR someone would likely apply to this strategy.

Review of other Jurisdictions Implementing Strategy and Strategy Evaluations

a. **Does Seattle Municipal Court currently use strategy.** This particular strategy is not commonly recommended by prosecutors nor is it commonly implemented by judges in SMC. Prosecutors

[32] http://jec.unm.edu/manuals-resources/municipal-court-checklists-and-scripts/pre-trial-release-bond-and-bail-checklist

typically will recommend release on personal recognizance in circumstances where unsecured appearance bonds are most likely to be used.

b. **Location / jurisdiction where strategy is implemented.** There are three jurisdictions that implemented this strategy: 1); Yakima County, Washington, 2) state of Colorado, and 3) New York City.
c. **Description of population using strategy. Include data, where available.** Please see the summary below.
d. **How much does the tool cost jurisdiction to implement and/or maintain?** We assume there is no additional cost to implement this strategy, because the administrative function of releasing a defendant on a secured money bail bond vs. an unsecured appearance bond is probably the same, with potentially fewer steps for an unsecured appearance bond.

For answers to questions e-h, please see below.

e. **Are there published evaluations on strategy? If yes, summarize findings.**
f. **Do evaluations publish any outcome data on strategy.**
g. **Are there evidence-based practices published to guide implementation?**
h. **Are there reasons strategy would have outcomes consistent or inconsistent with published evaluations here in Seattle? (demographics, legal limitations, etc.)**

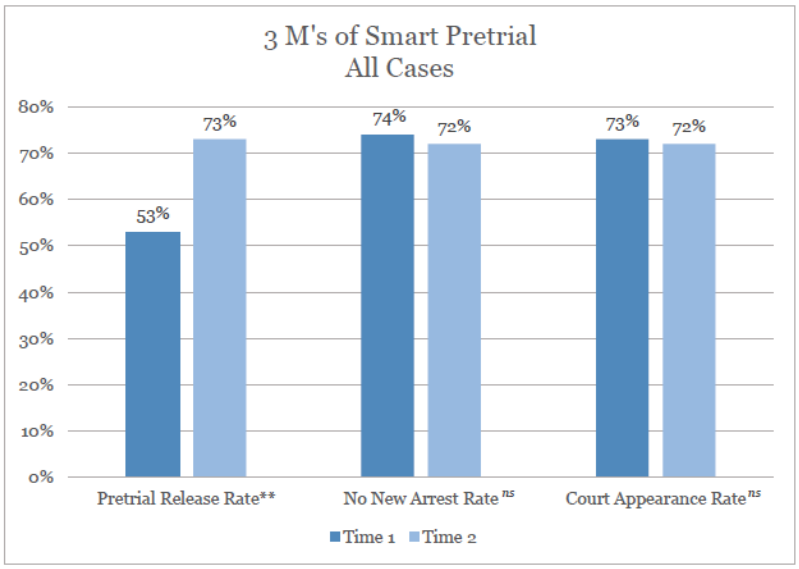
Below is a summary of three jurisdictions.

Yakima County, Washington

Yakima County was selected as one of three sites nationally to participate in a Bureau of Justice Assistance's Smart Pretrial Demonstration Initiative that began in late 2014. As part of this work, policy makers collaboratively developed and implemented new procedural pretrial justice system improvements in February 2016. The improvements included implementing an actuarial pretrial assessment tool for all newly charged defendants who are booked into the county jail, designing and establishing a docket dedicated to first appearances, providing a dedicated public defense attorney to join the dedicated prosecutor at first appearances, and establishing a pretrial services agency that provides pretrial assessment and management services to the county. Yakima County's pretrial justice vision statement included the three Smart Pretrial Demonstration Initiative goals: "1. Maximize public safety; 2. Maximize court appearance; and 3. Maximize the appropriate use of release, release conditions, detention, and public resources."[33]

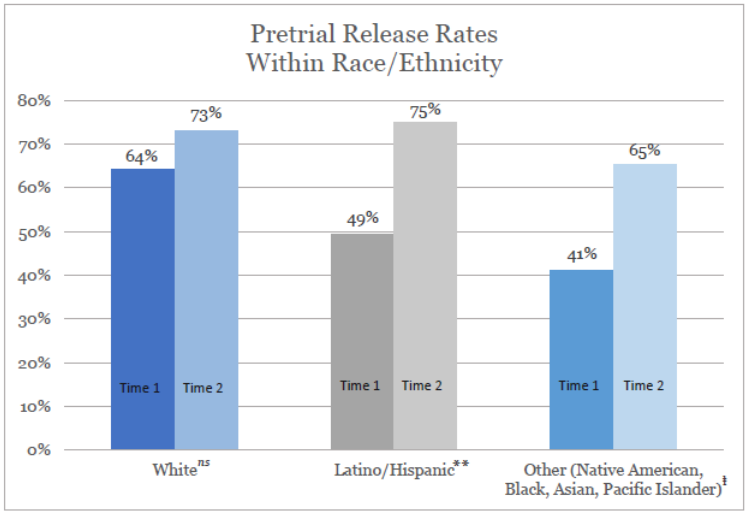
During pre-implementation (Time 1), only 53% of defendants were released pretrial compared to post-implementation (Time 2) when the release rate increased substantially to 73% released pretrial. This significant increase in release rate, however did not correlate with any statistically significant difference in public safety and court appearance outcomes when compared to pre-implementation period.

[33] Yakima County, Washington Pretrial Justice System Improvements Pre- and Post- Implementation Analysis by Claire M. B. Brooker, Nov 2017.



ns Chi-square test was not significant, $p > .10$
** Chi-square test was significant at $p < .01$

In addition, the impact of the reform had a significant improvement on pretrial release rates on people of color. During the pre-implementation phase there was a statistically significant disparity in the pretrial release rates between people of color and Whites. White defendants were generally released at a much higher rate than other races/ethnicities. This disparity improved post-implementation with the largest impact on Latino/Hispanic defendants who's release rate increased from 49% to 75% post-implementation.

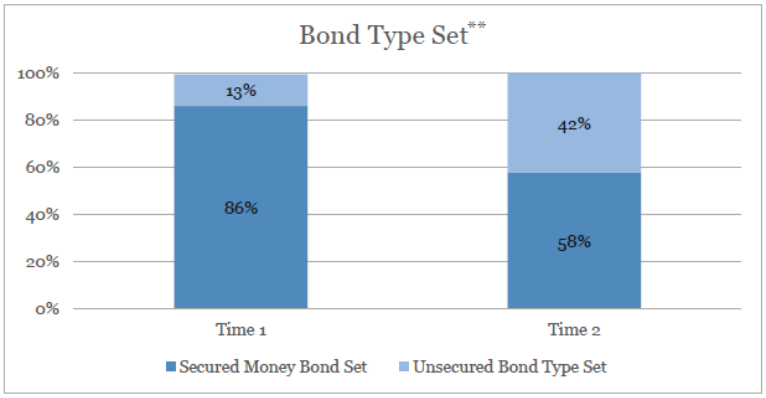


ns Chi-square test was not significant, $p > .10$
** Chi-square test was significant at $p < .01$
ł Chi-square test was significant at $p = .07$

Figure 2b. *All cases in custody at first appearance that would have been assessed with the PSA in Time 1 (White = 70; Latino/Hispanic = 71; Other = 39), and were assessed in Time 2 (White = 78; Latino/Hispanic = 68; Other = 23).*

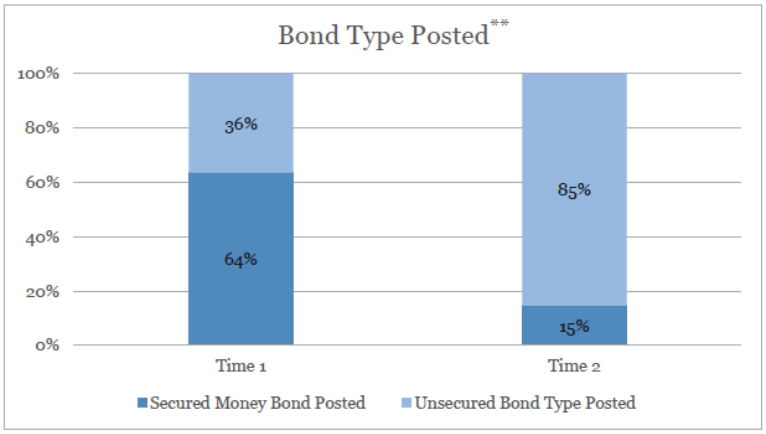
Pretrial release rates were impacted by the increase use of unsecured bonds, which judges set considerably more in the post-implementation phase (13% in Time 1 vs. 42% in Time 2). Defendants

posting bond were much more likely to post an unsecured bond type in the post-implementation time period (36% in Time 1 vs. 85% in Time 2) compared to the secured cash bail bond.



** Chi-square test was significant at $p < .01$

Figure 3a. *All cases in custody at first appearance that would have been assessed with the PSA in Time 1, and were assessed in Time 2 (Time 1 N = 179 (1 No Bond Hold was removed); Time 2 N = 169).*



** Chi-square test was significant at $p < .01$

Figure 3b. *All cases in custody at first appearance that would have been assessed with the PSA in Time 1, and were assessed in Time 2, and posted bond (Time 1 N = 96; Time 2 N = 123).*

The experience in Yakima County demonstrates that the increase use of unsecured bonds means more defendants can post bail and therefore are released at a much higher rate. For example, 85% of defendants were able to post an unsecured bond and be released pretrial compared to only 36% who posted bail pre-implementation.

Colorado

In 2013 the Colorado state legislature adopted HB 13-1236, "Best Practices in Bond Setting," which substantially altered the pretrial statutory scheme in Colorado. This act was the first comprehensive overhaul of the Colorado bail statutes since 1972. In that process, researchers and policy-makers developed the Colorado Pretrial Assessment Tool (CPAT), an empirically validated multi-jurisdiction pretrial risk assessment instrument for use in any Colorado jurisdiction and designed to replace any existing pretrial assessments in use in Colorado. The CPAT identifies which defendants are likely to be higher risk to public safety (commit new crimes) and to fail to appear for any court date during the pretrial period.

The PreTrial Justice Institute (PJI) conducted a Colorado Money Bail Study to analyze the data on secured (money) bonds v. unsecured (personal recognizance) bonds. The data showed that the public safety and court appearance rates of individuals within each risk category were not impacted by the use of a secured or monetary bond as opposed to personal recognizance. Secured monetary bonds, even those with higher dollar amounts, do not increase appearance rates for defendants or contribute to better public safety. The results are summarized as follows:

Pretrial Risk Category	Public Safety Rate	
	Unsecured Recognizance Bond	Secured Surety/Cash Bond
Level 1 (lower)	93%	90%
Level 2	84%	79%
Level 3	69%	70%
Level 4 (higher)	64%	58%

Pretrial Risk Category	Court Appearance Rate	
	Unsecured Recognizance Bond	Secured Surety/Cash Bond
Level 1 (lower)	97%	93%
Level 2	87%	85%
Level 3	80%	78%
Level 4 (higher)	43%	58%

Note: All statistical comparisons were not statistically significantly different.

View Appendices 3 and 4 for the most recent information from Mesa County and Denver County regarding public safety and court appearance rates using the CPAT, which demonstrates that public safety and appearance rates in both jurisdictions are exceeding expectations.

The study, using data from over 1,900 defendants from 10 Colorado counties, found the following:

- Unsecured bonds are as effective at achieving public safety as are secured bonds.
- Unsecured bonds are as effective at achieving court appearance as are secured bonds.
- Unsecured bonds free up more jail beds than do secured bonds because: (a) more defendants with unsecured bonds post their bonds; and (b) defendants with unsecured bonds have faster release-from-jail times.
- Higher monetary amounts of secured bonds are associated with more pretrial jail bed use but not increased court appearance rates.

<u>New York City</u>

In New York City, the Vera Institute did a report on alternatives to traditional bail. Since many New Yorkers cannot meet the financial and other demands of traditional bail, slightly less than half of all accuseds make bail before the end of their cases. In other words, more than 50% of accuseds remain detained pretrial in jail waiting for their cases to resolve.

Partially secured and unsecured bonds are alternative forms of bail that are easier to afford because they do not require that people have to put up large amounts of money or to pay nonrefundable premiums and fees to bail bondsmen. However, the study found that in the 40,000 cases annually, New York City rarely imposes these less financially burdensome alternatives.

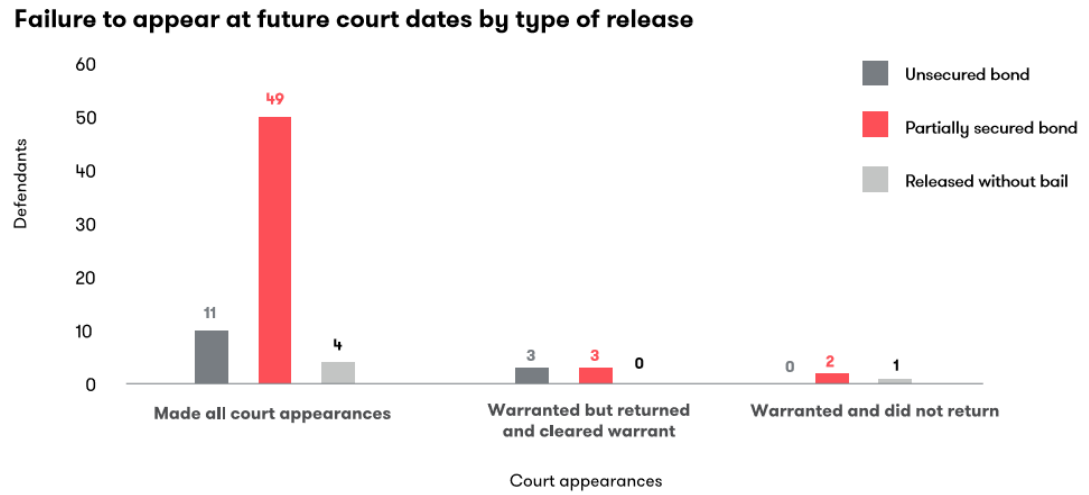
The Vera study looked at a total of 99 cases and tracked them from arraignment for 9-12 months to analyze the impact of what would happen if partially secured and unsecured bonds were used more often. The study covered the boroughs of Manhattan, Queens, Brooklyn and Bronx, and they found that judges in New York City rarely imposed the alternative forms of bail because they were unlikely to go against custom and unaware that these forms of bail exist. Both judges and attorneys were deterred from using partially secured or unsecured bonds because of the complexity of paperwork, time needed to complete it and the need for testimony from the obligors.

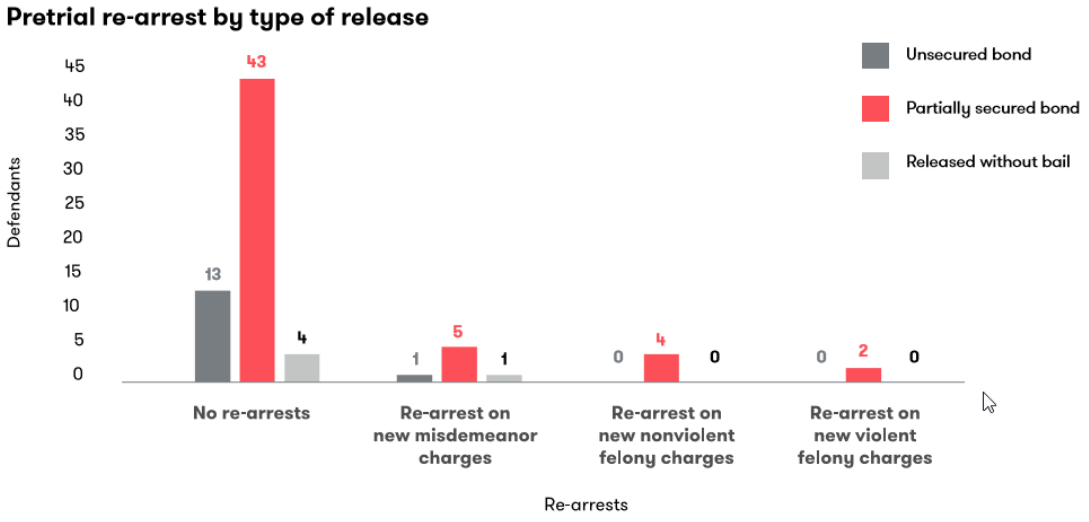
During the three month pilot, the project had three objectives:

1) To educate judges and defense attorneys about alternative forms of bail and combat the overall lack of awareness about how to request, or set a partially secured or unsecured bond;
2) To create a cohort of cases in which these forms of bail were set and to analyze their outcomes, including bail-making, court appearance, pre-trial rearrest, and case disposition, and
3) To develop a better understanding of why alternative forms of bail have been rarely used, and what about the cases in this cohort inspired a different approach and what efforts are needed to promote the use of these alternatives going forward.

The results of the experiment were promising:

- Sixty-eight percent made bail, and an additional 5 percent were released on recognizance.
- The use of alternative forms of bail was not limited to low-level offenses or certain types of offenses— approximately 54 percent of cases had a top charge of a felony, and the cohort spanned the gamut from drug possession, larceny, and robbery, to assault, criminal contempt, and weapons possession.
- Those released had a combined court appearance rate of 88 percent and a rate of pretrial re-arrest for new felony offenses of only 8 percent.
- When released pretrial, the majority of cases resolved in a disposition less serious than the initial top charge at arraignment, with one-third ending in dismissal and another 20 percent ending in a non-criminal conviction.





Potential Racial Equity and Community Engagement Outcomes

a. **Who administers strategy. (Court, Community partner, Other?)**

The unsecured appearance bond is similar to being released on personal recognizance, but it goes the additional step of requiring the defendant to sign a bond with a certain amount of money that must be paid if the defendant fails to appear or violates the conditions of release. Given how the strategy would work, the court is the primary administrator of this strategy and the prosecutors and defense attorneys would play a role in making recommendations.

b. **Does the strategy involve supervising or surveilling individuals?** No, the strategy does not require supervision or surveillance, since most of the defendants released would be considered low-risk for failure to appear, interference with justice or community safety risk harm.

c. Who benefits financially from strategy?

In the case of unsecured appearance bonds, the defendants would be released without any upfront payment of money. Unlike the money bail system, defendants would not have to pay a bail company or

put up any security to earn their release. Only if defendant fails to appear or violates the conditions of release, then the defendant would be required to pay.

d. Is tool designed to, or has tool impacted racial disproportionality in pretrial confinement population?

Given that Black defendants make up 27% of the population of SMC criminal defendants while only 7% of the overall Seattle population demonstrates Blacks and non-whites are overrepresented in the criminal justice system. In a study of Yakima's pretrial justice improvements pre- and post-implementation, the use of unsecured bonds did improve outcomes for defendants of color, because defendants posting bond were much more likely to post an unsecured bond type then a secured money bond.[34]

e. What community collaboration is available for strategy implementation?

We believe we should do a racial equity analysis on the use of unsecured appearance bonds as an option included in a menu of pretrial services strategies. The community engagement can inform the impact of this particular strategy on communities of color and lower socio-economic backgrounds.

Summary of Conclusion

Seattle Municipal judges rarely use unsecured appearance bonds as a form of pretrial release strategy, probably because prosecutors and judges typically recommend and decide to PR in these types of cases. However, the pretrial practice of using unsecured appearance bonds is common practice in federal courts. Title 18, United States Code, Section 3142 defines the categories of "release and detention" a defendant may be subject to and contains the rules under which the court and parties must proceed relating to bail matters. Release on personal recognizance or upon execution of an unsecured appearance bond (18 USC Sec 3142(b)) is one of the four categories available to the federal judge in making a determination regarding bail. In order for the prosecutors, judges and defense attorneys to incorporate the use of unsecured appearance bonds will require a mindset and practice change. Instead of equating unsecured appearance bonds as another form of PR, we should think about unsecured appearance bonds as an alternative to cash bail. For example, in cases where cash bail is appropriate, the prosecutor should consider recommending an unsecured appearance bond for the judge to consider as an alternative to cash bail. Studies in New York City, Yakima County and counties in Colorado demonstrate that the use of unsecured appearance bonds increases the rate of release without having a significantly negative impact on appearance rates or public safety. One of the concerns in this pretrial strategy is that if defendants fail to appear than they are responsible for the payment of the bond, which for poor and indigent defendants saddles them with another legal financial obligation that they are unable to pay. The pretrial strategy of unsecured appearance bonds should be accompanied with other strategies like text messaging and community based pretrial strategies to assure the success of the defendants appearance in court.

[34] Pg. 9 Yakima County, Washington Pretrial Justice System Improvements Pre- and Post- Implementation Analysis by Claire M. B. Brooker, Nov 2017.

Community Based Pretrial Release Strategy

Author: Seattle Office of Civil Rights

General Overview of Strategy

Community-based alternatives to bail are strategies that address prosecutorial and judicial concerns regarding factors that discourage release including likelihood individual will (1) appear at court, (2) interfere with the administration of justice, and/or (3) commit a violent crime.[35] These tools "re-conceptualize the pretrial process in a way that replaces money bail with better tools suited to further the legitimate purposes of pretrial decision making."[36] Community-based alternatives to bail can effectively promote court appearance and increase community safety while less harmful than bail and pretrial detention.

Community-based alternatives are administered by community-owned organizations or individuals rather than services and programs provided by courts or other government agencies. A community-based alternative to bail could be as simple as a responsible community or family member available and willing to vouch for and assist in compliance with any release conditions prescribed. It could also be formal support services provided by a community-based non-profit agency.

Why "community-based" strategies?

The current use of bail harms Black and brown communities disproportionately. Overwhelming data from diverse types of jurisdictions show a clear pattern that "when money bail is set, [B]lack and Latino people are more than twice as likely as white people to remain stuck in pretrial detention."[37] When you overlay this data with other studies showing that pretrial detention results in worse case outcomes and has a "criminogenic effect on people—that is, detaining someone pretrial makes that person more likely to commit a crime", it illuminates how much the burden of bail compounds the punishment for those communities already most impacted by racism.[38] Any strategy to change current bail practices must address these harms. Community-based strategies developed and led by those communities most impacted by racism are necessary to achieve this goal.

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[35] See Washington court rule on "Release of the Accused" http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=204

[36] "Moving Beyond Money: a primer on bail reform" by Harvard Law Schools' Criminal Justice Policy Program, http://cjpp.law.harvard.edu/publications/primer-bail-reform

[37] "Money Bail Criminalizes Race and Poverty"https://www.usatoday.com/story/opinion/policing/spotlight/2017/11/28/time-national-fund-chips-away-money-bail-and-stops-criminalizing-poverty/890484001/

[38] "Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing, https://harvardlawreview.org/2018/02/bail-reform-and-risk-assessment-the-cautionary-tale-of-federal-sentencing/

Pretrial service programs exist in many different types of organizational arrangements and with varied relationships with the court. For the purposes of this survey report, the focus is on tools delivered by individuals and organizations that are not based within, or provided by, the court or government.

While there are jurisdictions that provide court-based alternatives to bail, best practice--as advanced by the National Association of Pretrial Services Agencies (NAPSA) recommends that pretrial tools and services be provided by an independent agency from that of the court, given the "unique mission and role of pretrial service, which in some instances may not be congruent with the mission of the host entity."[39]

In addition to mission incongruity, there are other reasons why community-based strategies can be more effective than those offered through court, probation, or other government departments. These include: the ability for community-based organizations to reflect the individuals they serve and thus be more effective building trust and providing culturally responsive services, the ability to provide client driven holistic services or wraparound services that meet other unmet needs in addition to court concerns, the increased trust—and thus efficacy- that results from a relationship built on more than supervision and monitoring or transactional court-prescribed interactions.

There are already many organizations in the Seattle area that assist individuals who are criminal justice-involved to access the support they need to stay safe and stable in their own communities.[40] Some of these organizations provide holistic support to enable client self-determination and/or healthy development, or they may provide support so a client can access a specific benefit or service that will address an unmet need which is triggering court involvement. They do this by getting individuals enrolled in an education program, connected with proper mental health support and/or substance use treatment, access to housing, and other services that meet unmet needs.

Some of these are organizations provide services that we usually think of as "diversion", where an individual is offered a formal pathway outside the traditional legal process, or a reduced penalty, if /when accessing a social support. Law Enforcement Assisted Diversion (LEAD)[41], Creative Justice[42], and Choose180[43] are examples of these types of programs.

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[39] National Association of Pretrial Services Agencies' Standards on Pretrial Release: http://www.pretrial.org/download/performance-measures/napsa%20standards%202004.pdf

[40] Community Passageways, Northwest Justice Project, Disability Rights Washington, Creative Justice, Chief Seattle Club, Solid Ground, Southwest Youth and Family Services, Southeast Youth and Family Services, TeamChild, are some of the many Seattle area organizations that help individuals access the resources they need to be safe, stable, and healthy in their own communities.

[41] http://leadkingcounty.org/

[42] http://creativejustice.4culture.org/

[43] http://choose180.org/

There are also organizations that provide support for individuals but the relationship with the judicial system likely differs on a case-by-case basis, where providers may advocate for their client at court, but a formal offer of diversion isn't available. In these cases, judges and prosecutors may consider an individual's involvement with the agency as a mitigating factor for pretrial detention, charges, or sentencing. Northwest Justice Project and other legal aid organizations and the Youth and Family Services organizations are examples of these types of agencies. Some organizations may do both. These organizations can provide support that address the underlying reasons why an individual may be court-involved. However, the more rooted the organizations is within the community it serves, and reflective of the community it serves, the more effective any support service will be.

Indeed, many defendants at SMC are probably already connected with a social service agency which could assist in addressing judicial concerns regarding pretrial release. However, for the court to understand these services as an "alternative to bail", it will likely require introductions or a strengthening of relationships between court stakeholders and these organizations. A framework will need to be developed between organizations and the court so that service providers can tailor support to alleviate court concerns and to provide appropriate communication with the court to reduce reliance on bail.

Pretrial Release Programs:

In addition to the types of community-based organizations mentioned above, there is a growing industry of organizations that provide pretrial release programming specifically with the goal of reducing jail populations and pretrial confinement while ensuring compliance with court mandates. In 2009, the Pretrial Justice Institute (PJI) conducted a survey of pretrial agencies' services programs, that showed that from the 171 jurisdictions that responded to the survey (300 were asked), 35 percent of pretrial services programs were administered by probation departments, 23 percent in courts, and 16 percent in jails, 14 percent were independent government agencies, and 8 percent were non-profit agencies.[44]

Example of a non-profit pretrial agency:

- San Francisco Pretrial Diversion Project www.sfpretrial.org:
    - The San Francisco Pretrial Diversion Project (SFPDP) was established in 1976 through the joint efforts of a group of socially conscious residents, the San Francisco Bar Association and the judges of the Municipal Courts. With the understanding that most individuals charged with a misdemeanor offense did not benefit perceptibly by jail time, they were convinced that both the goals of crime prevention and rehabilitation would be better served by an alternative program of rehabilitation, education, and community service work. SFPDP was formed to provide first-time misdemeanor offenders of non-violent charges with the opportunity to have their case dismissed by completing a program. Programs

[44] "2009 Survey of Pretrial Service Programs, August 2009" http://www.pretrial.org/download/pji-reports/new-PJI%202009%20Survey%20of%20Pretrial%20Services%20Programs.pdf

include Own Recognizance, Group Facilitation, Assertive Case Management, Street Environmental Services Program, Neighborhood Courts, Pretrial Diversion, and Project 20 / Project 22.

A warning on pretrial service programs:

As Seattle explores developing alternatives to pretrial detention and bail, it's important to review the lessons learned from other jurisdictions to prevent adopting harmful or ineffective practices. As the Chicago Community Bail Fund explains in their critique of Cook County's pretrial service programs:

Under the guise of helping accused people come back to court and avoid re-arrest, pretrial conditions restrict the liberty of innocent people and even mimic the same harms as pretrial incarceration, causing loss of jobs, housing, access to medical care and putting severe strain on social support networks and family members. Pretrial conditions such as curfews actually place more severe restrictions on freedom than sentences received after conviction, such as probation, supervision, and conditional discharge. Furthermore, punitive pretrial conditions coerce people to plead guilty, undermining accused people's rights and recreating the negative impacts of incarceration in jail. These pretrial conditions violate the presumption of innocence that seeks to prevent punishment before conviction.[45]

To remedy these harms, the Chicago Bail Fund recommends that any tool aimed at addressing pretrial release concerns should "treat people with respect and dignity…[and] should address needs identified in partnership with the accused individual."[46] They also highlight the possibilities that come from providing additional support for court-involved individuals. "There are also opportunities to connect people with truly supportive services based on their individual needs, including core needs like housing."[47]

Before Seattle proceeds with the development of or investment in any kind of pretrial service, it is critical to learn from those most burdened by the current policy about what should be built to create effective solutions and how current institutional programs could be changed to reduce present harms. Those who have lived experience with bail determinations can help answer the "why", "where", and "how" to address solutions to current pretrial incarceration policies.

Shifting investments away from courts and jails are laudable goals and reinvestments must be directed towards what will be most effective and promising at addressing the root causes that

[45] "Punishment Is Not a "Service" The Injustice of Pretrial Conditions in Cook County, October 2017, https://www.chicagobond.org/docs/pretrialreport.pdf
[46] Id.
[47] Id.

feed our current system, including how the City addresses the impacts of racism on the Black and Native communities particularly.[48] The City must confront the national history of slavery and genocide of Native and Black communities and their relationship with mass incarceration in its analysis of current impacts and future policy considerations. Acknowledging that the City's current and historic use of incarceration has exacerbated trauma, investments to reduce reliance on bail must consider how the City supports the capacity of those communities most impacted by racism and incarceration to repair and heal. This is integral to, and must be woven into, any conversation regarding the City's plan to reduce reliance on bail and pretrial confinement.

Population eligible for strategy

Community-based strategies could be tailored appropriately to an individual's need and thus anyone could be eligible for a community-based strategy depending on organizational capacity and availability

How it addresses public safety and court appearance

"Community-based alternative to bail" is a broad term that encompasses all strategies that address prosecutorial and judicial concerns regarding an individual's release that are provided by non-court/government agencies or individuals. Community-based strategies satisfy specific judicial concerns with the assistance of court-involved individual.

Addressing failures to appear for court: For example, if the court is concerned an individual may not appear for the next court hearing, a community-based alternative could be that a friend/relative/social worker is committed to identifying the most effective intervention to promote court appearance and then connecting the court-involved individual with the appropriate support whether it be via court date reminders or transportation.

Addressing safety: Community-based strategies can address safety concerns by ensuring that individuals are accessing the appropriate support they need to stay safe and stable in their own community. TeamChild and Community Passageways are both local organizations that work with youth and young adults who are criminal justice-involved that strive to keep their clients out of incarceration by making sure that individuals are accessing the school, treatment, or

[48] Even when examining impact on economic ability alone, the harms of jail including the use of bail and pretrial incarceration is significant. "Jail hurts poor people twice: once by depriving them of income behind bars and once by stigmatizing them once they are free. The end result is less income mobility. Formerly incarcerated men in the bottom earnings quintile were twice as likely to still be there 20 years later, compared to men who were never sent to jail or prison. While part of this is due to the fact that incarcerated individuals are more likely to be frequent criminals, part is due to the negative effects of even one jail stretch." http://thefederalist.com/2017/08/07/boost-income-mobility-reform-bail-system/

housing that is necessary to be safe and healthy. Community-based agencies can listen to the specific concerns raised by the court and then, in partnership with the court-involved individual, draft a tailored safety plan that addresses these concerns.

Review of other Jurisdictions Implementing Strategy and Strategy Evaluations

a. Does Seattle Municipal Court currently use strategy.

While defendants who appear at SMC may be relying on community-based strategies to advocate for their release, there don't appear to be formal arrangements between SMC and community-based agencies to provide services for defendants as alternatives to bail.

b. Location / jurisdiction where strategy is implemented.
c. Description of population using strategy. Include data, where available.
d. How much does the tool cost jurisdiction to implement and/or maintain?

Throughout the County, jurisdictions are utilizing an array of support tools to reduce reliance on bail. The Pretrial Justice Institute has published a survey listing many of the programs offered at that time.[49] At this point more data would be needed regarding the use of bail in Seattle to project local implementation and maintenance costs. For example, how often is bail used to promote court appearance vs. community safety? Without a better understanding of the current function and reliance on bail, it is hard to estimate what alternative costs are.

e. Are there published evaluations on strategy? If yes, summarize findings.
f. Do evaluations publish any outcome data on strategy.

- Evaluation of San Francisco's Homeless Release Project: **Community-Based Treatment: The Impact of the Homeless Pretrial Release Project**[50] Evaluation summary states:

The data illustrate that the differences in arrest rates and seriousness of offense between offenders who participated in HRP and the comparison group are attributable to this unique approach to community corrections. In addition, individualized treatment, which is the hallmark of the community-based treatment model, yields a positive long term impact on the institutional level: reduced rate of re-offenses and reduced costs of over detainment.[51]

g. Are there evidence-based practices published to guide implementation?

[49] http://www.pretrial.org/download/pji-reports/new-PJI%202009%20Survey%20of%20Pretrial%20Services%20Programs.pdf

[50] "Community-Based Treatment: The http://www.cjcj.org/uploads/cjcj/documents/community.pdf
[51] Id.

h. Are there reasons strategy would have outcomes consistent or inconsistent with published evaluations here in Seattle? (demographics, legal limitations, etc.)

There are many organizations that have published "best practice" guides for pretrial services. They vary based on institutional goals and values. Before relying on any "best practice," Seattle must first develop racial equity outcomes, values, principles and define the desired goal of any pretrial program or tool it hopes to implement. For example, many of the "best practice" and "evidence-based" recommendations do not consider reducing racial disproportionality as a paramount goal of pretrial release, some "best practices" are developed valuing cost-savings over other outcomes, many do not weigh harm done to court-involved individuals when implementing alternate forms of incarceration like electronic or GPS monitoring. It appears that very few of these "best practice" guides have been informed by those who have been incarcerated or have been directly impacted by a bail determination. Reviewing best practices should only be done when Seattle can clarify and prioritize its goals in implementing alternative to bail.

Some of the guides reviewed for this survey report include:

- Chicago's Bail Fund's Pretrial Report: https://www.chicagobond.org/docs/pretrialreport.pdf
- Pretrial Justice Center for the Court's Report on Pretrial Services and Supervision: http://www.ncsc.org/Microsites/PJCC/Home/Topics/Pretrial-Services.aspx
- National Association of Pretrial Services Agencies' Standards on Pretrial Release: http://www.pretrial.org/download/performance-measures/napsa%20standards%202004.pdf
- National Institute of Corrections' A Framework for Pretrial Justice: https://nicic.gov/framework-pretrial-justice-essential-elements-effective-pretrial-system-and-agency
- National Institute of Corrections' Elements of a High Functioning Pretrial System: http://www.pretrial.org/download/performance-measures/napsa%20standards%202004.pdf

Potential Racial Equity and Community Engagement Outcomes

In Cynthia Jones' article "Give Us Free", she cites twenty-five studies that find racial bias in pretrial bail decisions (regardless of whether the court was based in a rural or urban setting).[52] Moving to strategies that decrease the racial disproportionality evident in the current system is critical to the success of any reform effort.

[52] Jones, C.E. (2013). "Give Us Free:" Addressing Racial Disparities in Bail Determinations. Journal of Legislation and Public Policy, 16: 919-961 (2013).

One of the strong benefits of relying on community-based strategies to address court concerns is that supervision, when deemed necessary, is shifted away from institutions that are often susceptible to maintaining institutional racism. This responsibility is shifted to organizations that are more reflective and representative of the individual's own community, may not have the institutional structures in place that increase racially biased outcomes, and are more likely to be culturally responsive in their approach.

a. Does the strategy involve supervising or surveilling individuals?

Since this survey report is focused on presenting "community-based" pretrial services rather than any specific tool, this strategy may include supervision or surveillance, depending on court concerns. However, because community-based strategies could encourage or require service providers developing safety plans in partnership with the court-involved individual, the plan could ensure the least restrictive means necessary to address safety.

b. Who benefits financially from strategy?

If the City chooses to invest in community-based strategies, the contracted community-based organization would benefit financially from the City's investment.

c. Is tool designed to, or has tool impacted racial disproportionality in pretrial confinement population?

Yes, community-based pretrial release tools have contributed to reducing racial disparities within the pretrial confinement population. Racial equity outcomes will depend on the nature of the organization implementing the tool and the court's commitment and prioritization of reducing the racial disparity of the population incarcerated pretrial.

d. What community collaboration is available for strategy implementation?

Since there are currently no organizations in Seattle, specifically tasked with providing "pretrial release support", the City would need to assist in building community capacity to develop such an organization. Alternatively, the City could invest in community-based organizations already providing support to court-involved individuals. The benefit of investing in organizations already providing direct services is that they will have experience providing wraparound service support, would theoretically be motivated to support the individual for a duration longer than the jurisdiction of a criminal charge, and are equipped with experience addressing root-cause issues.

Ideally, the City will develop any strategy to address current pretrial confinement practices with those communities most impacted by bail. This recommendation was highlighted in the report, *Community Conversation on Bail*, prepared by Bana Abera for SOCR in January 2018:

> *The solutions for harmful institutional practices and policies must come from those with lived experience and sharp analysis of systemic racism and the criminal legal system. Accountable and principled partnerships with most impacted and organized communities is critical to creating pathways towards racial equity and social justice within City policies, departments and beyond…If Seattle's goal is to reduce and eliminate the disproportionately harmful impacts of money bail and pretrial detention in Black/African, Native American, Immigrant and Refugee, unhoused and cash-poor people, there is a need to shift the culture in SMC and the LAW department to accept that a racial equity lens is critical to all decisions related to criminal legal system reform, especially with this current focus on bail.*

Conclusion

The City's current use of bail is ineffective and disproportionally harms communities of color. Development of community-based alternatives to bail that are informed by those most impacted by the criminal justice system would be an opportunity for the City of Seattle to build on its unique position as a pioneer in addressing institutional racism while addressing persistent racial disproportionality in incarceration rates and imposition of money bail. Shifting the City's reliance on money bail to use of community-based strategies that address judicial concerns regarding release could drastically reduce the City's use of money bail while keeping communities safe.

Risk Assessment Tools Pretrial Release Strategy

Author: King County Department of Public Defense

General Overview of Strategy

Risk assessment tools purport to use "objective" criteria to determine the probability that a person with characteristics similar to a specific Accused Person is likely to commit a crime or fail to appear while pending adjudication of charges. Because these tools rely on data that is heavily inflected by racial bias, have been inadequately studied, and fail to measure actual criminal behavior, they should not be implemented in SMC.

Background

The term "risk assessment," in the context of setting pre-trial release conditions, generally refers to the use of very large data sets containing the characteristics and behaviors of individuals.[53] Complex statistical analysis determines which characteristics correlate to a targeted behavior (failure to appear for a court hearing or, defined in various ways, the commission of an offense during a certain time period). In basic terms, the frequency with which a particular individual characteristic is associated with the targeted behavior, controlling for other variables, determines the weight given to the possession of that characteristic in a risk assessment tool. For example, if, all other things being equal, a significant portion of the individuals in the database who missed court are under a certain age, being under that age will be weighted more heavily in determining the probability that a particular Accused Person will miss a court hearing. The risk assessment tool that emerges is a list of criteria (generally including things such as age, sex, criminal history, prior failures to appear, etc.) and a weight or "score" associated with that characteristic (for example, being beneath a certain age may count as three points). Administration of the tool requires the determination of whether a particular Accused Person possesses the listed characteristics and adding up that individual's "score."[54] An Accused Person's score determines their assignment to a risk category, High/Medium/Low.

The use of risk assessment tools in making decisions about the imposition of pre-trial conditions of release continues to spread widely throughout the U.S.[55] Some states or even particular jurisdictions within a state build their own risk assessment tools, while others purchase commercially available tools.[56] However, rigorous analyses of the impact these tools have on court appearance and crime rates in the jurisdictions that have adopted them are scarce, suffer from poor methodology, and are often performed by or for the for-profit companies that produce the tools.[57] The most widely used tool

[53] *See* Laura and John Arnold Foundation (LJAF), *Public Safety Assessment: Risk Factors and Formula* (© 2013-2016). http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf

[54] *See* Sandra G. Mayson, *Dangerous Defendants*, 127 YALE L.J. 3, 490-568 (31 Mar 2018).

[55] *See, e.g., Pretrial Risk Assessment*, PRETRIAL JUST.INST. (28 March 2012) http://www.pretrial.org/download/pji-reports/Rational%20and%20Transparent%20Bail%20Decision%20Making.pdf (listing and describing, for example, The Florida Pretrial Risk Assessment Instrument, the Federal Risk Assessment Instrument).

[56] *See* Sandra G. Mayson, *Dangerous Defendants*, 127 YALE L.J. 3, 490-568 (31 Mar 2018).

[57] Richard Berk, *An Impact Assessment of Machine Learning Risk Forecasts on Parole Board Decisions and Recidivism*¸13 J. EXP. CRIMINOL. 193, 193 (2017).

appears to be the Public Safety Assessment (PSA) developed by the Laura and John Arnold Foundation.[58]

Potential Racial Equity and Community Engagement Outcomes

Although facially race neutral, risk assessment tools necessarily incorporate the impact of racial and other biases that impact the data inside in the actuarial data set, the commonly described "garbage in, garbage out" problem. A wide variety of authors have described the manner in which the tools reflect and perpetuate the racial disparity running through our criminal justice systems.[59] Criminal history data, generally one of the weightiest characteristics, for example, arises out of a system heavily influenced by race:

- A lack of jury diversity has been demonstrated to produce higher conviction rates for Black defendants;[60]
- Custody status plays a significant role in whether a defendant chooses to accept a plea deal, so any role race played in an individual's prior pre-trial custody status in the past will perpetuate that bias within a facially race neutral risk assessment;
- Over-policing of poor neighborhoods populated by higher rates of people of color;
- Criminal history may influence economic success which, in turn, influences the neighborhood in which a person lives, which, again, determines rates of policing;
- Crime detection methods that focus on street crime and, therefore, have a greater impact on the poor, who conduct a greater portion of their life in public.

Because risk assessment tools rely on data produced by a biased system, the risk assessment tools will likely never be much more than a new coat of paint on the same structural infirmities that they purport to ameliorate. In many ways, this basic, central failing should be obvious, but the superficial empiricism of the tools in combination with the incredibly sophisticated data analysis they employ, unassailable by the mathematically undertrained lawyers and politicians shaping bail reform legislation, easily lures one into unquestioning acceptance.

Review of other Jurisdictions Implementing Strategy and Strategy Evaluations

Loosely described as "evidence-based," risk assessment tools create a veneer of objectivity. Those who champion the use of such tools frequently claim that their application is free of racial and other subjective bias,[61] reduces the occurrence of crime by those released based on their risk score, and

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[58] *See* Laura and John Arnold Foundation (LJAF), *Results from the First Six Months of the Public Safety Assessment – Court in Kentucky* (July 2014), http://perma.cc/S8GJ-ZKZ2 (describing the implementation of the tool in Kentucky, one of the earliest adopters of Risk Assessment Tools and likely the most studied application of the PSA in any jurisdiction).

[59] *See* Skeem, Jennifer L. and Lowenkamp, Christopher, *Risk, Race, & Recidivism: Predictive Bias and Disparate Impact* (June 14, 2016). Available at SSRN: https://ssrn.com/abstract=2687339 or http://dx.doi.org/10.2139/ssrn.2687339 (containing both a description of how risk assessment tools incorporate and perpetuate racial bias and providing citations to other helpful articles in this area).

[60] Katherine Beckett, *The Underrepresentation of Blacks in The King County Jury Pool*. University of Washington. (May 11, 2016).

[61] *Race & Pretrial Risk Assessment*, PRETRIAL JUST.INST. https://www.pretrial.org/download/pji-reports/Race%20&%20Pretrial%20Risk%20Assessment.pdf.

reduces the number of pre-trial detainees.[62] Within Washington State, numerous workgroups and various sub-committees have, as called for here, produced short descriptions, critiques, and analyses of risk assessment tools; the most frequently referenced application of such a tool in Washington State come from Yakima County. Yakima adopted the Public Safety Assessment (PSA).[63] Yakima introduced this tool into a deeply troubled pre-trial system. Data collected by Vera documents the meteoric increase of Yakima's pre-trial detainees between 1980 and 2012, far outpacing the rate in similar counties as well as the national average, which, itself, increased at a disturbing pace during the same time period.[64]

Clair M. B. Brooker produced a study of the implementation of the tool in Yakima that largely touts its positive effect[65], but this study reflects the murky world of risk assessment analysis; Ms. Brooker wrote her study for an organization called Justice System Partners which has "partnered" with the PSA's creator, the Laura and John Arnold Foundation,[66] raising significant questions about the objectivity and independence of the research results. Ms. Brooker's analysis failed to take into account the suite of other changes made by Yakima during the same period of time as the PSA, including, significantly, the provision of a defense attorney at arraignments and bail determinations and a vigorous argument aimed at judges in the county to reverse a trend of detaining Accused Persons charged with inconceivably innocuous offenses, like Driving with a Suspended License in the Third Degree, barely more than a traffic ticket.[67] "Studies" produced by the Laura and John Arnold Foundation have become the subject of vociferous criticism within academic communities.[68]

The success of risk assessment tool appears to frequently break down over time, assuming, even, some initial causal improvements.[69] In "Assessing Risk Assessment in Action," a frequent resource for this summary, Megan Stevenson examines and re-analyzes data from Kentucky (which, like Yakima, had early been championed as an overwhelming success story), which has long used a risk assessment tool

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[62] Stevenson, Megan T., *Assessing Risk Assessment in Action*, MINN. L. REV, Vol. 103, Forthcoming (February 9, 2018) Available at SSRN: https://ssrn.com/abstract=3016088 or http://dx.doi.org/10.2139/ssrn.3016088.

[63] Claire M. B. Brooker, *Yakima County, Washington Pretrial Justice System Improvements: Pre- and Post-Implementation Analysis*, PRETRIAL JUST. INST. AND JUST. SYSTEM PARTNERS (2017), Available at https://justicesystempartners.org/wp-content/uploads/2015/04/2017-Yakima-Pretrial-Pre-Post-Implementation-Study-FINAL-111517.pdf.

[64] Vera Incarceration Trends by County, available at http://trends.vera.org/profile?fips=53077&incarcerationData=pretrial.

[65] In addition to subsequently discussed problems with Ms. Brookers study within the academic community, even local stakeholders developed suspicions about her work; *see* Mark Morey*, Yakima Pretrial Program Showing Promise*, YAKIMA HERALD, May 16th, 2017; available at https://www.yakimaherald.com/news/crime_and_courts/yakima-pretrial-program-showing-promise/article_1e31a8be-3abc-11e7-8e8d-53761adb83cb.html.

[66] https://justicesystempartners.org/projects/supporting-the-implementation-of-the-psa-tool/.

[67] Yakima County Pretrial Policy Team, *Yakima County Pretrial System Implementation Plan*, Nov. 12, 2015; available at https://www.whatcomcounty.us/DocumentCenter/View/17896/Yakima-Smart-Pretrial-Implementation-Plan-2015-11.

[68] Stevenson, Megan T., Assessing Risk Assessment in Action MINN. L. REV, Vol. 103, Forthcoming (February 9, 2018); available at SSRN: https://ssrn.com/abstract=3016088 or http://dx.doi.org/10.2139/ssrn.3016088.

[69] Stevenson, Megan T., Assessing Risk Assessment in Action MINN. L. REV, Vol. 103, Forthcoming (February 9, 2018); available at SSRN: https://ssrn.com/abstract=3016088 or http://dx.doi.org/10.2139/ssrn.3016088.

and more recently adopted the PSA.[70] In Kentucky, data gathered relatively soon after the adoption of the PSA appeared to indicate early success in release and crime rates. Ms. Stevenson's analysis, however, of data collected after more time had passed demonstrated that these early benefits eroded over time and appeared to have completely reverted if not worsened since the PSA was implemented.[71]

The bulleted list below enumerates some of the most obvious problems, beyond those described above, with the implementation and evaluation of these tools:

- Risk assessments produce a probability that an individual with characteristics similar to that of the specific Accused Person before the court will engage in an undesired behavior within a specified period of time. In making release decisions shortly after the filing of charges, judges have little ability to predict the actual period of time between arrest and adjudication; knowing that someone who will be released for 2 months possesses characteristics that correlate with a higher probability of engaging in the undesired conduct within the next year are of little value, particularly in a system such as ours where judges are expected to impose the least restrictive release conditions necessary.
- It is politically and legally untenable to completely eliminate judges' exercise of discretion in formulating conditions of release; risk assessment scores will never be more than one factor to be considered in such decisions and so, ultimately, the tool may do little to impact the subjective biases we hope to eliminate.
- It's almost impossible to accurately measure the degree that implementation of risk assessment tools actually reduces the occurrence of disfavored behavior because we can only ever measure the detection of the behaviors rather than the real rate of occurrence. As discussed above, detection rates bear the heavy influence of the structural biases of our criminal justice system. Because this phenomenon also sweeps up and increases the arrest rates for out-of-custody pre-trial Accused Persons, introducing this data into a Risk Assessment tools reference may compound the problems targeted for remediation.
- Judges do not ultimately decide who will be released pending trial and who will be detained; instead, judges can only set bail and/or impose conditions of release. Those who are actually able to achieve release will, therefore, be under-determined by the application of the risk assessment tool.
- Risk assessment tools do not measure, or even purport to measure, the likelihood that an individual will engage in disfavored behavior while in custody or under some other release condition. Some individuals may, for example, be more likely to commit a violent crime while in detention than while in the community. Unless we are prepared to concede that the safety of those in custody (many of whom are also presumptively not guilty and awaiting adjudication) or under court supervision should be valued less than other members of our community, the risk assessment will not truly produce useful probabilities.

Although the main focus of much of the discussion around risk assessment tools involve attempts to measure the tool's success in predicting criminal behavior (likely importing this focus from the sentencing context in which the tools have enjoyed a longer tenure), the "primary function of bail" and other release conditions is to "ensure an accused's appearance in court."[72] Money-based release

[70] Stevenson, Megan T., Assessing Risk Assessment in Action MINN. L. REV, Vol. 103, Forthcoming (February 9, 2018); available at SSRN: https://ssrn.com/abstract=3016088 or http://dx.doi.org/10.2139/ssrn.3016088.
[71] *Id.*
[72] 2018 Wash. Legis. Serv. Ch. 276 (S.B. 5987).

conditions allow a wealthy Accused Person, who is otherwise similarly situated, to gain release where a less wealthy person will remain in custody. Any risk assessment tool will likely have to either incorporate considerations of wealth (whether directly or through markers such as stable housing, employment, etc.) and therefore perpetuate economic discrimination or remove it as a referenced characteristic. Problematically, wealth may very well be a highly accurate predictor of future appearance for a variety of reasons: reliable transportation, the ability to get a day off work, child care, housing stability, etc. The impact of wealth, under these circumstances, may be compounded by coincidences like the court's location relative to the Accused Person's residence, methods and availability of public transportation, and other unpredictable barriers to appearing in court. Perhaps requiring all people to re-appear at a place and time weeks in the future and sanctioning the failure to do so is, itself, fundamentally unfair. Once again, pulling back the curtain on risk assessment tools reveals the persistence of the same, basic structural problems of our criminal justice system.

Conclusion

Our pre-trial determinations made pursuant to CrRLJ 3.2 are a failure, and the implementation of risk assessment tools will perpetuate our and entrench our errors. We fail for a simple reason: we ask the wrong question, so we will never arrive at the right answer. We assume the people who appear in court, charged with a crime are broken, malicious, malfunctioning; we assume they are a "risk," and we try to create increasingly intricate systems of government sponsored surveillance, sometimes obvious, sometimes masked as "services."

The correct question must focus on our system's risks, malfunctions, and malice. Instead of emptying buckets of resources into government run and/or surveilled programs that build additional obstacles for those already struggling to achieve basic stability, our recourses should be dedicated to enriching the availability of community based services like treatment, housing, mental health treatment, social workers, food, and medical care. We should challenge ourselves to steer those who appear before our courts to these services that will facilitate stability, predictability, and health. At the same time, we will create an increasingly robust system of services within our community that do not begin or end with criminal charges.

Appendix A

Superior Court Criminal Rules

CrR 3.2
RELEASE OF ACCUSED

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release in Noncapital Cases.

Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

(1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or

(2) there is shown a likely danger that the accused:

(a) will commit a violent crime, or

(b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (d) and (g) of this rule.

(b) Showing of Likely Failure to Appear--Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(3) Require the execution of an unsecured bond in a specified amount;

(4) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(5) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if
available; or

(6) Impose any condition other than detention deemed reasonably necessary to assure appearance as required. If
the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the
available information, the accused's financial resources for the purposes of setting a bond that will reasonably
assure the accused's appearance.

(c) Relevant Factors--Future Appearance. In determining which conditions of release will reasonably assure the
accused's appearance, the court shall, on the available information, consider the relevant facts including but not
limited to:

(1) The accused's history of response to legal process, particularly court orders to personally appear;

(2) The accused'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 activitiesor receipt of financial assistance from the government;

(3) The accused's family ties and relationships;

(4) The accused's reputation, character and mental condition;

(5) The length of the accused's residence in the community;

(6) The accused's criminal record;

(7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the
accused in complying with conditions of release;

(8) The nature of the charge, if relevant to the risk of nonappearance;

(9) Any other factors indicating the accused's ties to the community.

(d) Showing of Substantial Danger--Conditions of Release. Upon a showing that there exists a substantial danger
that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise
unlawfully interfere with the administration of justice, the court may impose one or more of the following
nonexclusive conditions:

(1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of
persons;

(2) Prohibit the accused from going to certain geographical areas or premises;

(3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described
activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;

(4) Require the accused to report regularly to and remain under the supervision of an officer of the court or
other person or agency;

(5) Prohibit the accused from committing any violations of criminal law;

(6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on
compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or
combination of conditions would reasonably assure the safety of the community. If the court determines under this
section that the accused must post a secured or unsecured bond, the court shall consider, on the available
information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the
safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering
with the administration of justice.

(7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(8) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(9) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if
available; or

(10) Impose any condition other than detention to assure noninterference with the administration of justice and
reduce danger to others or the community.

(e) Relevant Factors--Showing of Substantial Danger. In determining which conditions of release will reasonably
assure the accused's noninterference with the administration of justice, and reduce danger to others or the community,
the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's criminal record;

(2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the
accused in complying with conditions of release;

(3) The nature of the charge;

(4) The accused's reputation, character and mental condition;

(5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;

(6) Whether or not there is evidence of present threats or intimidation directed to witnesses;

(7) The accused's past record of committing offenses while on pretrial release, probation or parole; and

(8) The accused's past record of use of or threatened use of deadly weapons or firearms, especially to victims or
witnesses.

(f) Delay of Release. The court may delay release of a person in the following circumstances:

(1) If the person is intoxicated and release will jeopardize the person's safety or that of others, the court may
delay release of the person or have the person transferred to the custody and care of a treatment center.

(2) If the person's mental condition is such that the court believes the person should be interviewed by a mental
health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay

release of the person.

(3) Unless other grounds exist for continued detention, a person detained pursuant to this section must be released from detention not later than 24 hours after the preliminary appearance.

(g) Release in Capital Cases. Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.

(h) Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused'srelease and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation.

(j) Review of Conditions.

(1) At any time after the preliminary appearance, an accused who is being detained due to failure to post bail may move for reconsideration of bail. In connection with this motion, both parties may present information by proffer or otherwise. If deemed necessary for a fair determination of the issue, the court may direct the taking of additional testimony.

(2) A hearing on the motion shall be held within a reasonable time. An electronic or stenographic record of the hearing shall be made. Following the hearing, the court shall promptly enter an order setting out the conditions of release in accordance with section (i). If a bail requirement is imposed or maintained, the court shall set out its

reasons on the record or in writing.

(k) Amendment or Revocation of Order.

(1) The court ordering the release of an accused on any condition specified in this rule may at any time on
change of circumstances, new information or showing of good cause amend its order to impose additional or different
conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release, the court may revoke release
and may order forfeiture of any bond. Before entering an order revoking release or forfeiting bail, the court shall
hold a hearing in accordance with section (j). Release may be revoked only if the violation is proved by clear and
convincing evidence.

(l) Arrest for Violation of Conditions.

(1) Arrest With Warrant. Upon the court's own motion or a verified application by the prosecuting attorney
alleging with specificity that an accused has willfully violated a condition of the accused's release, a court shall
order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate
hearing for reconsideration ofconditions of release pursuant to section (k).

(2) Arrest Without Warrant. A law enforcement officer having probable cause to believe that an accused released
pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances
rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for
reconsideration of conditions of release pursuant to section (k).

(m) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need
not conform to the rules pertaining to the admissibility of evidence in a court of law.

(n) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class
of cases by forfeiture of collateral security where such disposition is authorized by the court.

(o) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the
accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's

personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the
recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

Comment

Supersedes RCW 10.16.190; RCW 10.19.010, .020, .025, .050, .070, .080; RCW 10.40.130; RCW 10.46.170; RCW 10.64.035.

[Adopted effective July 1, 1973; amended effective July 1, 1976; September 1, 1983; September 1, 1986; September 1, 1991; September 1, 1995; April 3, 2001; September 1, 2002; September 1, 2015; February 28, 2017.]

CrRLJ RULE 3.2.1
PROCEDURE FOLLOWING WARRANTLESS ARREST -- PRELIMINARY HEARING

(a) Probable Cause Determination. A person who is arrested shall have a judicial determination of probable cause no later than 48 hours following the person's arrest, unless probable cause has been determined prior to such arrest.

(b) How Determined. The court shall determine probable cause on evidence presented by a peace officer
or prosecuting authority in the same manner as provided for a warrant of arrest in CrRLJ 2.2. In making the probable cause determination, the court may consider an affidavit, a document as provided in RCW 9A.72.085
or any law amendatory thereto, or sworn testimony, and further may examine under oath the affiant and any
witnesses the affiant may produce. Sworn testimony, including telephonic statements, shall be recorded
electronically, stenographically, or by reliable method. The written or recorded evidence considered by the court may be hearsay in whole or part. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations. The court's probable cause determination may
be recorded through any reliable method. If the court finds that release without bail should be denied or
that conditions should attach to the release on personal recognizance, other than the promise to appear for
court hearing, the court shall proceed to determine whether probable cause exists to believe that the accused
committed the crime alleged, unless this determination has previously been made by a court.

(c) Court Days. For the purpose of section (a), Saturday, Sunday and holidays may be considered judicial days.

(d) Preliminary Appearance.

(1) Adult. Unless an accused has appeared or will appear before the superior court for a preliminary appearance, any accused detained in jail must be brought before a court of limited jurisdiction as soon as practicable after the detention is commenced, but in any event before the close of business on the next court day.

(2) Juveniles. Unless an accused has appeared or will appear before the superior court for a preliminary appearance, any accused in whose case the juvenile court has entered a written order declining jurisdiction and who is detained in custody, must be brought before a court of limited jurisdiction as soon as practicable after the juvenile court order is entered, but in any event before the close of business on the next court day.

(3) Unavailability. If an accused is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recorded by the court, enlarge the time prior to preliminary appearance.

(e) Procedure at Preliminary Appearance.

(1) At the preliminary appearance, the court shall provide for a lawyer pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2, and the court shall orally inform the accused:

(i) of the nature of the charge against the accused;

(ii) of the right to be assisted by a lawyer at every stage of the proceedings; and

(iii) of the right to remain silent, and that anything the accused says may be used against him or her.

(2) If the court finds that release should be denied or that conditions should attach to release on personal recognizance, other than the promise to appear in court at subsequent hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, unless this determination has previously been made by a court. Before making the determination, the court may consider affidavits filed or sworn testimony and further may examine under oath the affiant and any witnesses he or she may produce. Subject to constitutional limitations, the finding of probable cause may be based on evidence which is hearsay in whole or in part.

(f) Time Limits.

(1) Unless a written complaint is filed or the accused consents in writing or on the record in open

court, an accused, following a preliminary appearance, shall not be detained in jail or subjected to conditions of release for more than 72 hours after the accused's detention in jail or release on conditions,
whichever occurs first. Computation of the 72-hour period shall not include any part of Saturdays, Sundays,
or holidays.

(2) If no complaint, information or indictment has been filed at the time of the preliminary appearance,
and the accused has not otherwise consented, the court shall either:

(i) order in writing that the accused be released from jail or exonerated from the conditions of release at a time certain which is within the period described in subsection (f)(1); or

(ii) set a time at which the accused shall reappear before the court. The time set for reappearance must
also be within the period described in subsection (f)(1). If no complaint, information or indictment has been filed by the time set for release or reappearance, the accused shall be immediately released from jail
or deemed exonerated from all conditions of release.

(g) Preliminary Hearing on Felony Complaint.

(1) When a felony complaint is filed, the court may conduct a preliminary hearing to determine whether
there is probable cause to believe that the accused has committed a felony unless an information or indictment
is filed in superior court prior to the time set for the preliminary hearing. If the court finds probable cause, the court shall bind the defendant over to the superior court. If the court binds the accused over, or
if the parties waive the preliminary hearing, an information shall be filed without unnecessary delay. Jurisdiction vests in the superior court at the time the information is filed.

(2) If at the time a felony complaint is filed with the district court the accused is detained in jail or subjected to conditions of release, the time from the filing of the complaint in district court to the filing of an information in superior court shall not exceed 30 days plus any time which is the subject of a stipulation under subsection (g)(3). If at the time the complaint is filed with the district court the accused
is not detained in jail or subjected to conditions of release, the time from the accused's first appearance in district court which next follows the filing of the complaint to the time of the filing of an information in superior court shall not exceed 30 days, excluding any time which is the subject of a stipulation under subsection (g)(3). If the applicable time period specified above elapses and no information has been
filed in superior court, the case shall be dismissed without prejudice.

(3) Before or after the preliminary hearing or a waiver thereof, the court may delay a preliminary hearing or defer a bind-over date if the parties stipulate in writing that the case shall remain in the court of limited jurisdiction for a specified time, which may be in addition to the 30-day time limit

established in subsection (g)(2).

(4) A preliminary hearing shall be conducted as follows:

(i) the defendant may as a matter of right be present at such hearing;

(ii) the court shall inform the defendant of the charge unless the defendant waives such reading;

(iii) witnesses shall be examined under oath and may be cross-examined;

(iv) the defendant may testify and call witnesses in the defendant's behalf.

(5) If a preliminary hearing on the felony complaint is held and the court finds that probable cause does
not exist, the charge shall be dismissed, and may be refiled only if a motion to set aside the finding is granted by the superior court. The superior court shall determine whether, at the time of the hearing on such motion, there is probable cause to believe that the defendant has committed a felony.

(6) If a preliminary hearing is held, the court shall file the record in superior court promptly after notice that the information has been filed. The record shall include, but not be limited to, all written pleadings, docket entries, the bond, and any exhibits filed in the court of limited jurisdiction. Upon written
request of any party, the court shall file the recording of any testimony.

[Originally effective September 1, 1987; amended effective July 1, 1992; September 1, 1995; September 1, 2002; September 1, 2014.]

Seattle City Attorney
Peter S. Holmes

July 31, 2018

Via Email

Councilmember Lisa Herbold
Chair of Civil Rights, Utilities, Economic Development and Arts Committee
Seattle City Council
P.O. Box 34025
Seattle, Washington 98124-4025

RE: Seattle City Attorney's Office Agency Letter Regarding SLI 303-1-A-2

Dear Councilmember Herbold:

INTRODUCTION

As the elected Seattle City Attorney, I uphold my prosecutorial discretion for misdemeanor crimes as one of the most important duties the public has entrusted in me to perform. The Seattle City Attorney's Office (SCAO) has been a leader in many criminal justice reform initiatives and since January, my office has been working diligently to review our practices and to participate collaboratively in the interdepartmental Bail Reform workgroup in response to your Statement of Legislative Intent (SLI 303-1-A). Thank you for the opportunity to provide comments to Part 1 of the report requested by your office.

SUMMARY OF SCAO's BAIL PRACTICES

The mission of the Criminal Division of the SCAO is to:

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

- Advocate on behalf of crime victims to ensure the preservation of their rights to personal safety, restitution, and participation in the criminal justice process;

- Prevent crime and improve the quality of life in Seattle's neighborhoods by working proactively with residents, business owners, police, and other agencies to identify and resolve community problems; and

- Educate and advise the public and City departments on criminal justice issues and trends, and develop policies relating to the management of the criminal justice system including jail administration, sentencing guidelines, diversion programs, and municipal court procedures.

In carrying out this mission, we recognize our important duty as prosecutors to safeguard the rights of the accused, especially with the issue of release pending trial. Our prosecutors are trained to follow CrRLJ 3.2 in addressing conditions of release, which means there is a presumption of release unless it will not reasonably ensure the defendant's reappearance to court, or there is a likely danger that the defendant will commit a violent crime and/or intimidate witnesses or otherwise interfere with the administration of justice.

When the primary issue is likeliness to reappear, prosecutors will request the court to impose the least restrictive conditions that will reasonably ensure the defendant's presence at future hearings, including alternatives such as Electronic Home Monitoring (EHM) or Day Reporting. In only the most egregious situations will prosecutors ask for bail when likeliness to reappear is at issue.

Likewise, for non-violent crimes, prosecutors will seek the least restrictive alternative and only request bail when other alternatives have failed or would be fruitless. The prosecutor only requests the minimum amount to ensure reappearance, even if a higher amount has been set by the Seattle Municipal Court (SMC). For violent crimes against persons, prosecutors will also consider the facts, the nature of the offense charged, the defendant's criminal history, the history specific to the victim, and the danger that the defendant presents to the victim and others in our decision of whether to request bail and/or other conditions.

INTERPRETATION OF COURT RULE 3.2

There is a dispute within the Bail Reform workgroup on whether CrRLJ 3.2 allows for imposing conditions short of bail when a defendant is released on his or her personal recognizance. SCAO interprets CrRLJ 3.2 as allowing the court to impose conditions even when a defendant has been released on personal recognizance. SMC appears to agree with our interpretation of the rule, because the Court almost invariably imposes conditions that the defendant have no new criminal law violations and inform the court within one business day of any change of address while the case is pending, at a minimum.

CrRLJ 3.2 states defendants shall be released "without conditions" only if there has not been a finding of probable cause. CrRLJ 3.2(a) states that for those accused of non-capital cases (which is generally the case in Seattle Municipal Court), the accused shall be released on "personal recognizance" unless there is a risk of non-reappearance, danger of violent crime, or intimidation of witnesses/interference with the administration of justice.

Under CrRLJ 3.2.1, the court must make a probable cause finding at the defendant's first appearance. Under CrRLJ 3.2, if the court makes no such finding at the defendant's first appearance, then the accused must be released with no conditions.[1] However, the corollary to this initial portion of the rule indicates that if the court makes a probable cause finding, then it *can* impose conditions, and the rule enumerates several sample conditions that the court can set once a probable cause finding has been made.

CrRLJ 3.2(a) explicitly does *not* state that defendants who have had probable cause found should be released "without conditions," which an earlier portion of the rule stated referring to the cases where that was not the case. Instead, CrRLJ 3.2(a) indicates those defendants should be released on their personal recognizance unless one of three factors is present. Simple statutory construction dictates that the term "personal recognizance" therefore means something different under the rule than the term "without conditions." The court can impose conditions even where the defendant is released on personal recognizance.

In other words, had the rule intended defendants, where probable cause had been found, to be released without conditions, it would have said so, and it does not. In addition to simple statutory construction, Washington caselaw is replete with cases referring to defendants released "on personal recognizance on conditions" with no specific findings under CrRLJ 3.2, indicating these two concepts are not mutually exclusive. But, the City recognizes that certain conditions can be more onerous than others, and we craft our recommendations regarding conditions of release aiming for the least restrictive means to achieve the rule's intent.

COMMENTS ON PRE-TRIAL STRATEGIES

SCAO supports reforming the money bail system. We believe more investment in pre-trial services and alternatives to money bail is necessary to reform the system. Several pre-trial strategies discussed in Part 1 of this SLI report hold promise for reducing the pre-trial jail population. We also recognize that many strategies presented in the report would require additional investments and/or redistribution of funds currently in the criminal justice system.

Some strategies have never been used before in SMC, but we would be interested in exploring whether they can decrease our City's use of incarceration while still protecting community safety and the integrity of our justice system. We would be very interested in SMC implementing text message reminders and expanding the Lifeline Assistance

[1] This does occasionally happen in Seattle Municipal Court. The City may still proceed with the case, but no bail or conditions of any kind will be set unless and until the City persuades the Court to find probable cause based on new information.

program, because the research indicates this could cause a significant decrease in failures to appear.

We are not aware whether SMC has ever used unsecured appearance bonds, which is common practice in federal courts. We support the expanded use of this tool, so long as it does not have unintended consequences in disproportionately saddling defendants who are poor and communities of color with more Legal Financial Obligations. We also realize this strategy could present logistical questions or problems on enforcement, but we are open to hearing how it would work in practice at SMC if this tool is implemented.

Some of the pre-trial strategies outlined in Part 1 – such as EHC and Day Reporting – are already employed by SMC and requested by our office where appropriate. We appreciate these can often be alternatives to pre-trial incarceration. We would be more likely to recommend Day Reporting if the program could provide more resources and support to enable participants to return to court and abide by conditions of release. We also support the City expanding the number of spots for indigent defendants to use EHM.

SCAO has partnered with community-based organizations on diversion programs, which can also be viewed as alternatives to bail. For instance, we've had several defendants participate in the Law Enforcement Assisted Diversion (LEAD) program or being diverted through the pre-filing diversion Choose 180 program. Whether it comes from the Court in an expanded Day Reporting (or alternative) program, or through community-based organizations, a case management type approach may assist defendants not only in returning to court and abiding by conditions of release, but also in their lives beyond their involvement in the criminal justice system with wraparound support, including but not limited to: education, housing, substance abuse treatment, and employment.

SCAO believes the use of a risk assessment tool in pre-trial decision-making has a role if carefully crafted and implemented. Pre-trial risk assessment instruments must be designed and implemented in ways that reduce racial disparities in the criminal justice system. We believe each jurisdiction should use local data both quantitative and qualitative in order to avoid unintended consequences that perpetuate systemic bias against and disproportionately impacts communities of color. There are factors in some poorly drafted risk assessments – such as the defendant's highest level of education or zip code – that do not affect the relevant factors and could lead to racially disproportionate pre-trial incarceration, and those factors should not be included in any risk assessment tool employed by the City of Seattle. However, some factors in risk assessments are squarely within the realm of CrRLJ 3.2 – some of which are even given as examples within the rule itself – such as the defendant's criminal history, the defendant's history with this victim, the defendant's history of failing to appear and/or fleeing from custody, etc. In many respects the SCAO relies on risk assessment type factors in making our release recommendations to SMC. If an actual risk assessment tool could take out the risk of human error or bias in such a recommendation, we would be interested in exploring its use in Seattle.

CONCLUSION

SCAO recognizes the negative ways the money bail system impacts defendants' lives - especially, poor people and communities of color. We also recognize that historically the money bail system has had a disproportionate impact on the poor and communities of color. SCAO is committed to eliminating that disproportionality. We appreciate the opportunity to participate in the City's interdepartmental workgroup tasked to survey the alternatives to money bail. Reforming the money bail system can support our goals of advancing justice and protecting public safety.

The Washington State Pretrial Reform Task Force co-chaired by the Minority and Justice Commission and the state Superior Court Judges' Association are also leading efforts to address this issue at the state level. We believe the recommendations from the state Task Force due out this December will need to inform the recommendations implemented by City Council. Beyond the strategies in Part 1 of the report, the SCAO is open to other creative solutions to reduce crime and incarceration through violence prevention, diversion, bail alternatives, and improved system-level processes. Regardless of the outcome of this Bail Reform workgroup, we remain committed to working with the Mayor and City Council to improve public safety in our communities and equitably enforce the laws of the City of Seattle.

Very truly yours,

Peter H. Holmes
Seattle City Attorney

King County
Department of
PUBLIC DEFENSE
Upholding the Constitution,
one client at a time.

Anita Khandelwal
Interim Director

King County Department of Public Defense
710 Second Avenue, Suite 200
Seattle, WA 98104

(206) 296-7662 Fax (206) 296-0587
TTY Relay 711

August 1, 2018

Council Person Lisa Herbold
Council President Bruce Harrell
Seattle City Council

Dear Council Person Herbold and Council President Harrell:

Summary

DPD believes that robust and well-funded community-based pretrial services will reduce our rates of pretrial detention and are required by our shared commitment to racial and social justice. The harm of pretrial detention is well-documented, as is the racial disproportionality in rates of pretrial detention. The only way to address this harm, and indeed to reduce our reliance on the criminal justice system as a de facto (and very punitive) service provider, is to create a network of community-based providers who can help individuals facing criminal charges meet their underlying needs, both during and after the pendency of their cases.

Harms of Bail and Pretrial Detention

The Department of Public Defense (DPD) believes that virtually no circumstances justify pretrial detention in the context of misdemeanor accusations. This is particularly true given that many of the individuals are detained pretrial in Seattle Municipal Court (SMC) because they failed to appear for court and not because they have committed new, serious crimes.

The imposition of conditions of release that include the requirement of posting secured bonds leads, in the vast majority of misdemeanor cases, to pretrial detention. Pretrial detention or onerous conditions of release discriminate based on wealth, disparately impact people of color, and unjustly alter conviction rates because those detained pretrial choose to plead guilty at higher rates. Detained individuals also experience longer sentences.

as likely as white people to remain stuck in pretrial detention." When conditions of release contain the requirement of posting a secured bond, the wealthy walk free while the poor remain incarcerated.

DPD Position on Various Pretrial Conditions of Release Practices Considered by the Workgroup

Ending the use of money-based bail and its inevitable consequence of pretrial detention is no panacea for the myriad problems discussed above. The imposition of onerous conditions of pretrial release may pose an equal if not greater risk. Even when operated by non-governmental entities within the community, such conditions, as the Chicago Community Bail Fund learned, highlighted in the Seattle Office of Civil Rights' section of this report, can create the very same undesired collateral consequences of detention and money bail.

DPD believes that the workgroup should have begun by developing race and equity outcomes and carefully defined the desired principles, goals, and priorities that the pretrial programs we hope to create in Seattle would be geared toward accomplishing. We believe that following such a process would have resulted in a different and more useful report because it would have addressed the specific downstream effects our current approaches have on our communities and allowed us to tailor our suggestions to our communities' unique needs and challenges. Nonetheless, we offer our opinions on the various options considered by the workgroup below:

Community Based Strategies

Those accused of crimes are innocent until the government has proven them guilty beyond any reasonable doubt. From that basic principle, our Department embraces the necessary corollary that the deprivation of liberty of innocent people should, in any form, be imposed rarely and only under extraordinary conditions. When the court finds, after a full and fair consideration of detailed evidence that a particular case falls within this extraordinary group, DPD endorses the Seattle Office of Civil Rights' advocacy for Community Based Release Strategies.

The actual Community Based Release Strategies that should be adopted by Seattle can only be effectively formulated after considerable input from our community, with a particular focus on those groups within our community who are disproportionately impacted by pretrial release. We must partner with existing community groups to develop potential community based programs; we must learn more about what services are currently available, how they can be expanded, and how we can encourage the development of new providers.

By investing in our community, the services available here, and by creating a greater number and diversity of service providers, we seize the potential to build not only an effective and humane pretrial program but, beyond that, a lasting and robust system of services that those accused of crimes may benefit from long after their cases have concluded. Further, we will create stable services and providers within our community that may begin to ameliorate our ever-increasing struggle with homelessness, a devastatingly inadequate mental health treatment system, and a vast array of similar resources that already exist in cities as affluent and progressive as ours.

Conclusion

DPD is hopeful that, moving forward with this project, Developing Racial Equity Outcomes and engaging with individuals, groups, and service providers within our community will allow us to develop pretrial strategies that are shaped to address the unique problems caused by our historic over-reliance on money-based bail and develop a just, equitable approach to pretrial strategies. Community based strategies, used sparingly and developed to stabilize rather than disrupt individuals' lives and to address through the provision of services existing within the community the challenges these individuals face on a long-term, wrap-around basis, must be the focus of this work.

Sincerely,

Anita Khandelwal
Interim Director

Seattle
Office for Civil Rights

Mariko Lockhart, Interim Director

July 9, 2018

Dear Councilmember Lisa Herbold and Director Kirstan Arestad:

Re: Bail Reform Workgroup and the Bail Reform Report Part One

Criminal legal system stakeholders across the country are acknowledging that cash bail is fundamentally flawed. Bail is harmful, contributes to jail and judicial costs and negative case outcomes. The Seattle Office for Civil Rights (OCR) has been involved in several strategies to develop recommendations to reduce the use of bail, most recently as a member of the Bail Reform Workgroup. We joined the workgroup in November of 2017 excited to collaborate with the City's other criminal legal system partners to reduce the use of bail and harmful pretrial release conditions. We see our role on the workgroup as ensuring the process centers race and drives towards racial equity outcomes. This letter serves to provide background information regarding our recent efforts in addressing bail reform in the City and the framework we bring to this work.

Bail Reform is a Racial Justice Issue

By its very function, the use of bail unfairly impacts poor people. This exacerbates the injuries of institutional racism pervasive within the criminal legal system. Black and Native people are disproportionately more likely to be held on bail, less likely to be able to afford bond, and are more likely to suffer the harmful consequences that comes with incarceration.[1] Pretrial detention, even as few as two days, has shown to increase the likelihood of new arrests, failures to appear in court, family instability, loss of jobs, housing, and medical care.[2]

The statistics below illuminate how bail functions and its impacts in Seattle's criminal legal system:

- Though Seattle Municipal Court only adjudicates misdemeanors (low level offenses), roughly half of all Seattle Municipal Court defendants face some length of pretrial confinement.[3]
- More than half of all defendants incarcerated by Seattle Municipal Court are homeless, 90 percent are defined as "indigent" and the City spends at least $176 each night for their jail beds.[4]

[1] See "No Money No Freedom" by ACLU of Washington, September 2016. https://aclu-wa.org/bail
[2] Id. and " 8 Basic Principles For Money Bail Reform" by the The Katal Center for Health, Equity, and Justice https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=70c95804-a617-fcba-3082-e00285d2cccb&forceDialog=0
[3] "Pre-Trial Release at SMC: by SMC RPEG 2015.
[4] Jail Contract and forthcoming report by King County's Jail Health Services

- According to SMC's own data, over 90 percent of Black defendants are held on bail at the Personal Recognizance Screening Stage.[5] Although Black individuals make up only six percent of Seattle's population, roughly 29 percent of all SMC defendants are Black.[6]

Bail Reform and Seattle Office for Civil Rights

Under the Murray Administration, the Seattle Office for Civil Rights was asked to explore how the City could engage in meaningful bail reform while upholding racial justice principles. The Reentry Workgroup was encouraged to act as the vehicle for this effort. Given the broad scope of work assigned to the Reentry Workgroup under City of Seattle Resolution 31637, not including bail, the workgroup decided that they did not have the capacity needed to give bail reform the attention it required, so they declined to tackle this issue.

Instead, in the Summer of 2017, the Seattle Office for Civil Rights received funding to support a temporary consultant who would provide recommendations on an equitable process for the City to proceed with comprehensive bail reform. This consultant hosted "community conversations" in various locations around the City to listen to those with direct lived experience of bail, those who work on behalf of those facing charges in Seattle Municipal Court, court staff, and even representatives from the bail bond industry. The final report on this work concluded that the solutions for harmful institutional practices and policies must come from those with lived experience of those practices, who are equipped with a sharp analysis of systemic racism and the criminal legal system.

Bail SLI Workgroup and Part One of SLI

The Bail Reform Workgroup was created in response to Seattle City Council's Statement of Legislative Intent (SLI) 303-1-A-2 adopted last fall requesting a two-part report on alternatives to bail. The workgroup has been meeting since November, spending most of this time focused on accomplishing the "survey of actuarial tools used instead of cash bail" (Part One of the SLI) following this letter.[7] From the first convening of the Bail SLI Workgroup, and as the workgroup proceeds through this process, Seattle Office for Civil Rights has continued to encourage the workgroup to both lead with racial equity and commit to listening to those who have been most impacted by bail. The workgroup has not yet developed shared values, principles, or vision for this work other than to respond to the SLI. In June 2018, the workgroup participated in an OCR-led workshop to discuss how the City develops racial equity outcomes and how the racialized history of police and bail in the United States leads to different impacts on communities of color.

The Office of Civil Rights believes that the lack of group values and a shared analysis of systemic racial inequity shapes this report. The bail reform tools surveyed for this report were selected based on participating departments' interests and for the most part, reflect tools that maintain institutional control rather than address systemic inequities. Whether a tool was deemed effective when reviewing evaluations by other jurisdictions was often based on cost-savings, rather than whether the tool addressed racial disparities or other harms caused by incarceration.

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[5] "Pre-Trial Release at SMC" by SMC RPEG 2015.

[6] "INVENTORY OF CRIMINAL AND INFRACTION FINES AND FEES AT SEATTLE MUNICIPAL COURT: A research report in response to City Council Resolution 31637", August 2017.

[7] https://seattle.legistar.com/LegislationDetail.aspx?ID=3338892&GUID=7545B881-FEA8-48A7-8EE0-998C38E9BD56&Options=ID|Text|&Search=bail

For example, though reducing the use of cash bail is a goal, it is problematic to begin relying on "alternate forms of incarceration" that still threaten individual freedom and may mimic the harms caused by jail when a less restrictive alternative could be just as effective. Electronic home monitoring, early curfews, and daily check-ins with probation (or "day reporting"), are some of the burdensome tools that courts often rely on in lieu of bail.[8] But as the Chicago Bail Fund explains, "these conditions undermine the most basic abilities of legally innocent people and their loved ones to survive and thrive while their cases are pending."[9] Instead, OCR believes that, in partnership with communities impacted by incarceration, it would be more equitable to develop and invest in, truly supportive -- not punitive-- services based on individual needs provided by community-based agencies. We give examples of these services in the section of this report on "Community Based Pretrial Strategies."

Conclusion

It is promising that the City and its partners have begun to seriously examine how to increase reliance on tools other than bail to address pretrial release. The strategies we ultimately choose to advance should be informed by community and be rooted in a set of shared values and racially just outcomes held by all key institutional stakeholders. It is our hope that the workgroup develops and embraces a racial equity framework as this process continues, and that racial equity outcomes are designed in tandem with the communities most impacted by incarceration.

We look forward to working with all workgroup partners in designing and implementing a community engagement process to support the development of racial equity outcomes and hope that we delve deeper in building a shared analysis and vision for this work. We want success to be measured by decreasing racial disproportionality, reducing the use of cash bail, and meeting a shared set of racial equity outcomes, while keeping communities safe. We look forward to continuing this work with the other partners on the workgroup and hope that as we move on to Part II of the SLI, we can make a choice to intentionally and deliberately lead with race.

Sincerely,

Mariko Lockhart

[8] For more on the increasing reliance of "alternate forms of incarceration" in lieu of bail see https://www.motherjones.com/politics/2015/01/house-arrest-surveillance-state-prisons/, https://www.eff.org/deeplinks/2018/03/new-frontier-e-carceration-trading-physical-virtual-prisons.

[9] "Punishment Is Not a Service" The Injustice of Pretrial Conditions in Cook County, by Chicago Community Bail Fund, October 2017.

THE MUNICIPAL COURT OF SEATTLE

July 31, 2018

Councilmember Lisa Herbold
Council President Bruce Harrell
Seattle City Council
600 Fourth Avenue
Seattle, Washington 98104

Re: SLI Participation and Response

Dear Councilmember Herbold and Council President Harrell:

Seattle Municipal Court (SMC) Judges appreciate the opportunity to collaborate with Seattle City Council, Seattle Mayor's Office, Seattle Budget Office, Seattle City Attorney's Office (SCAO), King County's Department of Public Defense (KCDPD), and Seattle Office of Civil Rights (SOCR) to respond to Statement of Legislative Intent (SLI) 303-1-A-2 in issuing a report on bail reform. We believe the current cash bail system presents significant challenges to indigent and underserved populations and look forward to working with criminal justice stakeholders and the broader community to develop the most effective and equitable pretrial release strategies possible.

While the court chose to collaborate in response to this SLI, SMC Judges want to be clear that as separately elected officials representing the judicial branch of city government, decisions regarding defendant pretrial release practices are the Court's to make. SMC Judges are bound by state law and Washington State Criminal rule for Courts of Limited Jurisdiction (CrCLJ) 3.2, when considering an individual's eligibility for pretrial release. Any recommendations for local bail reform must understand and comply with these state legal requirements.

To that end, we are closely monitoring the work and recommendations of the Washington State Supreme Court's Pretrial Reform Task Force regarding statewide bail practices. This task force intends to issue a final report at the end of 2018. One primary focus of the task force is to examine ways to minimize the impact of pretrial detention on low-risk offenders by exploring safe and cost-effective alternatives to full incarceration. We believe it will be important to review and integrate state level recommendations or reforms into our local efforts to improve pretrial release practices.

SMC Judges also want to highlight to other stakeholders that as the releasing authority, a judge must keep in mind public safety concerns and aspects of liability as a result of their decisions. As the judicial branch of government, it is important that judges strike a balance between their mandated role in keeping communities safe and ordering the least restrictive alternative for those who are charged with criminal offenses.

Report Structure and Department Responses

To respond to part one of this SLI, the multi-department bail reform workgroup agreed on using a 19-question evaluation framework to research and report on six of the most common pretrial release strategies. The workgroup divided up the sections with different departments and the court authoring various sections of the report. The workgroup recognized that departments and the court likely did not have identical perspectives on each strategy and therefore committed to provide a response section within the SLI response for comments from the court or departments who did not author a particular section.

SMC wrote reports on three of the strategies: text-message hearing reminders; day reporting programs; and electronic monitoring. SMC feedback on the other three pretrial strategies: risk assessments; community-based pretrial supervision strategies; and unsecured bail, is offered below.

Pretrial Risk Assessments

SMC understood the purpose of the SLI was to highlight other jurisdictions using risk assessments and identify if there are evidence-based practices to consider if jurisdictions choose to implement one. SMC is unsure why KCDPD declined to use the 19-question evaluation framework each of the other workgroup members used to author their sections and instead authored what appears to be a position paper on risk assessments. This is especially challenging given that risk assessments are the primary tool being discussed and implemented nationally to reform bail.

Currently, SMC Judges do not have a formal position on pre-trial risk assessments. Risk assessments appear to be a promising approach, particularly when validated for local populations, but the Court believes they warrant further investigation. Because the KCDPD section lacks balanced research on risk assessments, the Court has provided additional information below.

Pretrial risk assessments have been used to replace cash bail systems in the State of New Jersey and Kentucky, and are endorsed by the Pretrial Justice Institute, a national leader in pretrial justice reform. The most common risk assessment implemented nationally, the Arnold Foundation's Public Safety Assessment (PSA), has been found to achieve court appearance and public safety goals while also limiting racial bias in pretrial release decisions.[1] At the regional level, Yakima County recently implemented the PSA and found that pretrial release rates increased from 53 to 73 percent with no change in public safety or court appearance, and racial / ethnic disparities in release rates decreased.[2]

A different risk assessment tool, the Virginia Pretrial Risk Assessment Instrument, has been used in the state of Virginia for many years, and has also been shown to predict pretrial behavior without creating

[1] The Public Safety Assessment–Court Analysis of Race and Gender, Laura and John Arnold Foundation, 2014
[2] Brooker, Claire M.B. (2017) *Yakima County, Washington Pretrial Justice System Improvements: Pre- and Post-Implementation Analysis.* Smart Pretrial Demonstration Initiative.

racial or gender disparities.[3] Findings from these studies suggest risk assessments could be an effective remedy to some of the criticisms of cash bail.

Interestingly, many of the top national defense counsel organizations including the American Council of Chief Defenders, Gideon's Promise, the National Association of Criminal Defense Lawyers, the National Association for Public Defense and the National Legal Aid and Defender Association, recently issued a joint statement voicing their strong support for pretrial risk assessments.[4]

There are best practices for implementing risk assessments, highlighted by the Pretrial Justice Institute[5], that increase their effectiveness and respond to some of the criticisms highlighted in KCDPD's paper. These include:

- Limit the use of assessments to measure risk for unlawful behavior and court appearance, but not social service needs-based information
- Assessments should inform, but not replace judicial decision-making
- The underlying factors impacting a risk score must be clear and open, without hidden or proprietary algorithms
- Accessing data to do the assessment should be easy and quick, to not delay prompt release
- Any instrument must be regularly tested and validated for the local population assessed

As KCDPD's position indicates, the use of risk assessment tools is a controversial issue. Judges have also expressed concern that the use of pre-trial risk assessment tools may reduce or eliminate their judicial discretion. Seattle Municipal Court will continue to monitor the Washington State Supreme Court Pretrial Reform Taskforce's state level recommendations on risk assessments. SMC judges remain open to further discussions with local criminal justice stakeholders and community members on the benefits and concerns regarding using a risk assessment tool to inform release decisions made at SMC.

Community-based Pretrial Supervision Strategies

When making bail determinations under CrRLJ 3.2, if Judges find it likely a defendant will not appear for a future court hearing or commit a violent reoffence, they must place the defendant on the least restrictive condition needed to reasonably assure his or her appearance. One potential supervision condition includes "placement with designated person or organization agreeing to supervise the accused."

As recommended in the report authored by SOCR, SMC Judges are interested to learn about and potentially build relationships with persons or programs in the community that could provide social services, pre-trial supervision, and increase the chances of return for future hearings. SMC already has some experience with this practice. Judges routinely release defendants to case managers in Seattle

[3] Mona J.E. Danner, Marie Van Nostrand, Lisa M. Spruance, Race and Gender Neutral Pretrial Risk Assessment, Release Recommendations, and Supervision: VPRAI and Praxis Revised, Luminosity, Inc., 2016.
[4] "Joint Statement in Support of the Use of Pretrial Risk Assessment Instruments." National Association of Public Defenders. Accessed May 23, 2017. http://www.publicdefenders.us/blog_home.asp?Display=563.
[5] *Pretrial Risk Assessments Can Produce Race-Neutral Results.* (2017) Pretrial Justice Institute.

Municipal Mental Health Court. Lately, judges have also been working more closely with staff dedicated to the Law Enforcement Assisted Diversion (LEAD) and Familiar Faces programs and taking defendant's participation in those programs into account when making release decisions.

The Court would be particularly interested in a "strengthening of relationships" with community-based programs that have demonstrated effectiveness or evidence-based approaches to promoting court reappearance.

The SMC Pretrial Services Unit currently provides a variety of effective services including personal recognizance and indigent defense screening, pretrial assessments, pretrial electronic monitoring, and pretrial day reporting. Pretrial services staff are trained and well positioned to build relationships with defendants and assist them in returning to court and meeting court conditions. Pretrial service staff is also interested in building relationships with outside providers and collaboratively working to meet the needs of defendants.

Unsecured Bonds

There is nothing currently prohibiting SMC Judges from considering the use of appearance or unsecured bonds on a case by case basis. Although the data coming out of the state of Colorado is promising, SMC does have some concerns with unsecured bonds. First, there are significant court process challenges to overcome, centering around the direct payment of bonds to courts. Second, communication challenges can arise between the court and defendant when bail amounts are adjusted in response to defendant's failing to appear or acquiring new charges, while out-of-custody. Third, there are potential negative financial impacts unsecured bonds might cause on defendants who choose to not reappear for future court hearings. At this time, judges will continue to consider the use of appearance bonds on a case by case basis.

Future Directions for Pretrial Reforms

We hope this report provides City Council useful information as we work together to implement meaningful and effective pretrial release strategies that counteract some of the current cash bail challenges. As called for in the SLI, we are pleased this report is being jointly issued to City Council and the heads of Seattle's criminal justice agencies, formerly the Criminal Justice Coordinating Council. We see this type of collaboration as a crucial step as SMC seeks to improve the services we provide to all defendants who come through our court.

Sincerely,

Ed McKenna
Presiding Judge
Seattle Municipal Court