



Seattle City Attorney

Peter S. Holmes

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Councilmember Lisa Herbold, Committee Chair
Council President M. Lorena González, Vice Chair
Councilmember Andrew Lewis
Councilmember Tammy Morales
Councilmember Kshama Sawant
Seattle City Council
600 Fourth Avenue, 2nd Floor
Seattle, WA 98104

RE: Seattle CAO Response to SLI Request CJ-24-A-2

Dear Public Safety & Human Services Committee:

The Seattle City Attorney's Office (CAO) presents this report to the Seattle City Council in response to Statement of Legislative Intent (SLI) CJ-24-A-2 which requested that we address a recommendation made by the Seattle Reentry Workgroup on expanding prefiling diversion opportunities for individuals age 25 and older. The CAO was tasked with evaluating the staffing, costs, and additional resources required to: 1) expand the current program to serve individuals over 25 while maintaining eligibility criteria; or 2) create a new diversion program for individuals over the age of 25 with different criteria, such as expanding the type of eligible crimes. The CAO is interested in, and committed to, creating a new diversion program for individuals over the age of 25 as resources are available. We anticipate modeling much of the foundation for the program on our current successful partnerships with community and broad eligibility criteria, as outlined below.

Background

A. Current Pre-File Diversion Program

Since 2017, the CAO has been successfully managing a Pre-Filing Diversion (PFD) program for 18-24-year-olds. Before full program implementation, our office completed a Racial Equity Toolkit (RET) in 2018 which was instrumental to providing the foundation for the program. The PFD program is staffed by two experienced attorneys and a part-time paralegal who specifically applied to work on this program and have completed additional race and social justice training. The PFD attorneys review reports sent to CAO that allege someone under age 25

committed a crime. Having staff, whose mission is to support alternatives to the traditional criminal legal system, screen all the reports helps ensure that all eligible cases are referred. The paralegal conducts all victim contact and data management, as well as coordination between the program attorneys and the community partners. The senior PFD attorney oversees the work of the team, works on policy-level decision making with administration in the office, and manages partner contracts, as well as handles more complicated cases and issues. Costs for these 2.5 FTE CAO staff is \$352,000 in 2020. CHOOSE 180 consultant costs, which includes one Outreach/Intake Specialist and 12 (monthly) workshops total \$225,000.

If a case is deemed eligible for diversion per an internal protocol, which includes level of seriousness of criminal history, the individual is invited to a four-hour Saturday workshop held monthly and attended by CAO attorneys. If the individual completes the Workshop, the case(s) are declined by the CAO before they are filed with the Court. CHOOSE 180, our community partner, conducts all outreach with the young adults and hosts the Workshops. Additionally, both CHOOSE 180 and the Community Resource Center (CRC) participate in aftercare follow-up with the young adults. Last year they successfully connected individuals to housing, employment, and treatment to address various needs. The program has been incredibly successful in the two and a half years it has been in existence. Less than 10% of the 334 young adults who completed the Workshop have been convicted of new crimes.¹ Additionally, our CRC partner conducted social service screening on 47 of the 107 young people who completed the Workshop in 2019. The young adults voluntarily engage in this post-Workshop connection; it is not a requirement of diversion. Those young people were connected to a myriad of resources including housing, employment, education, and chemical dependency support. CHOOSE 180 aftercare also provided almost 30 young adults connections to housing resources and over 20 young adults to employment opportunities.

1. Commitment to Racial Equity and Eligibility

Throughout the RET, the CAO dove deep into data and learned that only offering diversion to first-time offenders would result in increased racial disproportionality against young

¹ Recidivism rate calculated on 1/10/20. Figure includes all participants who completed the Workshop September 2017-November 2019.

persons of color since they are more likely to disproportionately have criminal histories. A fundamental goal from the RET was to reduce the racial disproportionality of the filings against young persons of color and as such the CAO offers diversion to individuals with criminal history. Furthermore, we recognize the benefit in trying a different intervention with a young person who has criminal history since clearly the prior interaction with the criminal system did not prevent recidivism. For young people accused of property and other non-person crimes, the only disqualifying criminal history is the same serious history, such as Class A felonies, which would also disqualify participation in the Law Enforcement Assisted Diversion (LEAD) program. For young people accused of committing person crimes such as Assault and Harassment, the person is ineligible if they have prior person crime history. Additionally, the victim is asked for input and in some cases given the power to veto a potential diversion opportunity. The CAO has been able to offer diversion to almost all young people accused of property crimes and some accused of their first crime against another person. We anticipate the criminal history eligibility for a 25 and older program would be based on similar broad eligibility.

2. Eligible Crimes

In the original pilot of the PFD program for 18-24-year-olds, the CAO started with only offering diversion of five crimes: Theft, Criminal Trespass, False Reporting, Obstruction, and Minor in Possession; none of which involved crimes against persons. In three years, the office has dramatically expanded the eligible crime types to include crimes like Property Destruction, Assault and Harassment. Not surprisingly, the most common crime diverted has always been Theft as Theft and Assault are the top two crimes our office files. Last year, almost half of all the participants were diverted on at least one case involving Theft (49%—53 of 108 participants). The CAO foresees a 25-and-older program also including these additional crimes, rather than property only crimes, since that model has been successful for the individuals 24-and-under. We would also continue to maintain additional screening criteria for person-related crimes to ensure public safety and that harmed victims have a voice.

Contingent upon the what we learn during a RET process for a new program, we envision partnering with a community organization, like CHOOSE 180, that can serve

individuals accused of the wide range of crimes included in our young adult diversion program. We see great value in keeping the crime type broad and in having consistency with our internal policies.

3. Post-File Diversion

The CAO and CHOOSE 180 became concerned that many unsheltered individuals were not receiving notice of the Workshop due to unstable housing and lack of good mailing addresses. To address this equity issue, the program has a post-file option for those young adults who may not have heard about the opportunity pre-file. This gives young people one final opportunity after the case has been filed to continue arraignment for workshop attendance. At Intake (the person's first appearance) the young person is assigned a Department of Public Defense attorney who can assess the case and ideally encourage the young person to attend the Workshop to avoid further involvement in the criminal legal process.

B. Other Collaborative/Diversion Programs

1. Pre-Trial Diversion

The Pre-Trial Diversion Program currently offers diversion to those with no criminal record. The Pre-Trial Diversion program traditionally has been a one-time chance for individuals to complete and have their alleged crime dismissed from their record. In direct collaboration with the Court, the program allows defendants to continue their case for an average of 90 days to perform community service and a social service screening, and their case is dismissed upon completion. Between 2015 and 2019, the number of individuals 24-and-under who completed this program went from 100 to 5. We anticipated and suspect that this reduction is because most young people who would have been eligible for the Pre-Trial Diversion program took advantage of the PFD program instead. According to the Court's statistics, in 2019 there were 52 defendants aged 25-and-older that entered Pre-Trial Diversions. We again anticipate that these individuals, in addition to others, would be diverted through an expanded PFD program.

2. Community Court

Community Court is a program that is set to be re-launched this year by the Court, in partnership with the CAO and the Department of Public Defense. Community Court takes a different approach to adjudicating pending criminal cases and is a collaborative effort between

Defense, Prosecution, Pre-Trial Services, and the Court. Its goal is to address unmet needs through connection to community services and support. This court-based model provides up to four opportunities for individuals with lower-level crimes like Theft and Criminal Trespass to have their cases diverted. Participants engage in a social service screening in partnership with the Court's Community Resource Center and must complete community service hours. Some participants will also have treatment obligations. If participants successfully complete their obligations, their case is dismissed. We anticipate some PFD-eligible individuals would also be eligible for Community Court had their case been filed. Community Court, though, is a post-file, court-based program that will be offered up to four times to an individual. Thus, these programs should primarily seek to complement each other rather than compete.

3. Law Enforcement Assisted Diversion (LEAD)

The LEAD program is a post-arrest and pre-bookings program designed to meet participants' immediate needs (like food or housing), then, over time with support from case managers, address the underlying issues of addiction etc. Officers exercise discretionary authority to divert individuals to community-based intervention programming rather than booking them into custody. The program focuses on finding ways to solve problems for a specific population of individuals who are consistently in the criminal justice system and not responding well to that approach. Our office has partnered with the police and REACH in order to assist this group of people with their particularly challenging set of needs. Many LEAD clients are out of the age range to qualify for the current PFD program; however, there has been some crossover of young people engaged in LEAD who have also participated in the CHOOSE 180 Workshop. Because our office has one attorney coordinating the cases of LEAD clients, we can work in close collaboration on how to best serve the young people we are seeking to engage. In those situations, we found that the programs complimented each other, rather than duplicated efforts, because of the unique benefits of each program and our collaboration. With any expansion of PFD, we plan on continuing to partner with LEAD.

C. Commitment to Innovative Alternatives

As reflected above, the CAO is committed to developing and partnering in innovative alternatives to the traditional criminal legal system. We acknowledge the power of supporting

and empowering community. We recognize the value of alternatives on both participants and public safety. The office's commitment to diversion comes from an understanding of the harm that the traditional legal system can inflict and the collateral consequences of a criminal record, especially on historically marginalized communities. We would support the expansion PFD, through increased resources, so that individuals of all ages will have the opportunity to be surrounded by a community of support and be seen by an organization like CHOOSE 180 as a possibility, not a problem.

Recommendation

A. Desire to Expand Pre-Filing Diversion

The CAO is committed to diversion and supportive of creation of new programming with additional dedicated resources. The office has a successful model of a community-owned diversion program in our young adult program in partnership with CHOOSE 180.

B. Additional Resources Required for Expansion

1. Racial Equity Toolkit (RET)

While we would model much of a new 25 and older program on the successes of the young adult program, any expansion of the PFD program would require a Racial Equity Toolkit (RET). We anticipate that the RET would support some version of community-owned diversion, but we do not know what format a program would take given some of the different challenges that a fully adult population may present. We anticipate the RET would also support our expansive criteria for diversion with regards to what crimes are eligible, and that the program could be offered to people with criminal history.

A RET would further understand the needs of the community and properly assess the financial and time commitment involved. The RET would cost approximately \$25,000 (one time) and CAO could lead the RET given our developed experience and familiarity with stakeholder input on this topic. The funding would be used to compensate stakeholders we engage with and help provide necessary resources like food, daycare, and possible fees for engagement sites.

2. Community Partners and CAO Staffing

Upon completion of the RET, the CAO foresees development of a contract with a community consultant following City consultant contracting requirements. We anticipate that the program would need at least \$225,000 annually for the consultant contract to deliver similar services as our current PFD program to the targeted group. Additionally, we would need to develop significant internal processes to adjust the way cases are being filed for individuals 25 and older. To staff a 25 and over program, which will present a larger pool of eligible participants, , the CAO would need a 1.5 FTE paralegal (bringing the current Paralegal to full-time and a second position) and 2.0 FTE Assistant City Prosecutors to organize and continue the program. The cost of this staffing is approximately \$430,000 annually. Additional costs may be identified at the conclusion of the RET. We recognize that we are entering uncertain times, especially as related to the budget. However, it is best that we present an honest assessment of the actual costs, based on our current knowledge and experience with this and similar programs. CAO would be unable to implement this program without additional staffing or contractual services funding.

Very Truly Yours,



Peter S. Holmes
Seattle City Attorney