1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

KING COUNTY

Signature Report

Motion 16087

Proposed No. 2021-0369.1 **Sponsors** Zahilay

A MOTION acknowledging receipt of a report detailing alternative ways to serve the needs of the community work program participants, in compliance with Ordinance 19210, Section 50, Proviso P4.

WHEREAS, the 2021-2022 Biennial Budget Ordinance, Ordinance 19210, Section 50, Proviso P4, requires the executive to transmit a report providing information on the department of adult and juvenile detention's community work program and alternative ways to serve the needs of program participants, and a motion acknowledging receipt of the report, and

WHEREAS, Ordinance 19210, Section 50, Proviso P4, provides that $100,000 shall not be expended or encumbered until the motion acknowledging receipt of the report is passed, and

WHEREAS, the council has reviewed the report submitted by the executive;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

The receipt of the report providing information on the department of adult and juvenile detention's community work program and alternative ways to serve the needs of

program participants, which is Attachment A to this motion, is hereby acknowledged in accordance with Ordinance 19210, Section 50, Proviso P4.

Motion 16087 was introduced on 11/2/2021 and passed by the Metropolitan King County Council on 4/19/2022, by the following vote:

Yes: 9 - Balducci, Dembowski, Dunn, Kohl-Welles, Perry, McDermott, Upthegrove, von Reichbauer and Zahilay

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

DocuSigned by:
Claudia Balducci
7E1C273CE9994B6...
Claudia Balducci, Chair

ATTEST:

DocuSigned by:
Angel Foss
92FC09E4162E45A...
Melani Pedroza, Clerk of the Council

Attachments: A. Community Work Program Proviso Response, September 2021

Community Work Program Proviso Response

September 2021

King County

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I. Proviso Text

Ordinance 19210; Section 50, Department of Adult and Juvenile Detention, P4[1]

1. Of this appropriation, $100,000 shall not be expended or encumbered until the executive transmits a report providing information on the department of adult and juvenile detention's community work program and alternative ways to serve the needs of program individuals and a motion to acknowledge receipt of the report and a motion acknowledging receipt of the report is passed by the council. The motion should reference the subject matter, the proviso's ordinance number, ordinance section and proviso number in both the title and body of the motion.
2. The executive shall convene a work group that shall include, but not be limited to: (1) one or more employees from the department of adult and juvenile detention; (2) one or more employees from the office of performance, strategy and budget; and (3) representatives from one or more community-based organizations serving individuals who have either participated in the community work program or have been considered for participation in the community work program, or both. The work group shall provide input into the preparation of the report. If the following departments do not participate in the work group, the executive should consult with each of the following, or designee, before finalization of the report: (1) the district court chief judge; (2) the prosecuting attorney; (3) the department of public defense director; and (4) the department of community and human services director.
3. The report shall include, but not be limited to, the following: A. A review of the legal restrictions, under state statute and county code, on who can participate in a community work program, either as an alternative to secure detention or for the mitigation of legal financial obligations; B. Annual data from January 1, 2017, through December 31, 2019, identifying the number of unique individuals placed in a community work program, the criminal charges filed against or criminal conviction of each individual at the time of placement, the court making the placement, the number of community work program hours assigned, whether the individual was placed on community work program pretrial or post adjudication and the number of individuals who successfully completed the program; C. Financial data for the community work program showing all program expenditures and revenues, including a list of entities purchasing community work crew services, for January 1, 2017, through December 31, 2019; D. A list and description of potential alternative program options considered by the work group, including reestablishment of the pre-coronavirus disease 2019 community work program and other options under the direction of the department of adult and juvenile detention, another county department or agency or a community-based provider; and E. An assessment of the potential options developed by the work group including the executive's preferred option.
4. The executive should electronically file the report and motion required by this proviso no later than September 1, 2021, with the clerk of the council, who shall retain an electronic copy and provide an electronic copy to all councilmembers, the council chief of staff and the lead staff for the law and justice committee, or its successor.

[1] Section 50, Ordinance 19210; P4 of the 2019-0148 version 3 King County signed Supplemental Budget Ordinance

II. Executive Summary

Background: King County has operated work crews since the Seattle-King County Department of Public Health (SKCDPH) began the first program in 1981. The program was designed to provide a diversion from jail for low-level, low-risk defendants as well as allow court-ordered sanctions and financial obligations to be satisfied. In 2018 the program was expanded to serve court-ordered individuals charged with low-level felony crimes.[2] Additionally, CWP became a part of the Regional Relicensing Program where eligible participants could volunteer their time to satisfy their court-ordered legal financial obligations (LFOs).[3]

In March 2020, the program was suspended per state-mandated shutdown due to the COVID-19 global pandemic and was closed permanently as a cost-saving measure as of January 1, 2021.

Report Methodology : Per Proviso Ordinance 19210, DAJD convened a workgroup of representatives from the DAJD Community Corrections Division, the Department of Adult and Juvenile Detention Administration Division, Prosecuting Attorney's Office, Department of Public Defense, Office of Performance, Strategy and Budget, Drug Court, Department of Community and Human Services, - Neighborhood House, and the District Court Chief Presiding Judge. [Appendix C] The purpose of the work group was to identify and provide an assessment of alternative options to the CWP.

The workgroup gathered quantitative and qualitative information to identify and evaluate potential alternatives to CWP. Via survey, former CWP participants who were active in the program from January 2017 to December 2019 were asked to provide feedback on the CWP to help the workgroup understand the program from an individual perspective and what factors should be considered in developing alternatives.

Legal Restrictions: The legal restrictions pertaining to who can participate in a community work program, either as an alternative to secure detention or for the mitigation of legal financial obligations, come from state statutes, King County code provisions, conditions imposed by the court, and case law.

Pursuant to King County Code 2.16.120(A)(1), DAJD, through the community corrections division, shall administer programs that provide alternatives to confinement in the adult correctional facilities.[4] Pursuant to KCC 2.16.122(B), the community corrections division must implement alternatives to adult detention, including but not limited to work crew, based on screening criteria approved by the superior and district courts.[5] It must also accept from the prosecuting attorney's prefiling diversion program, persons arrested for certain misdemeanor offenses for placement on work crews. Sex offenders are excluded from participating in work crew and the King County Superior Court imposes restrictions on the use of the Community Work Program.

[2] Cases involving less serious violence that does not result in injury, less serious economic or property offenses, burglaries, car thefts, and other offenses.
[3] King County Relicensing Program
[4] King County Code 2.16.120(A)(1) [Link]
[5] KCC 2.16.122(B) [Link]

Individual Data: In total, 89 percent of participants were ordered to CWP for criminal cases, and 11 percent were ordered for non-criminal traffic tickets.[6] Participants with both criminal and non-criminal fines, fees, and sanctions provided unpaid labor to satisfy their legal financial obligations at a rate of $150/day.

During the three-year time frame, approximately two-thirds of the participants completed the number of work program days ordered by the court. In 2017, 13 percent of the participants never reported to CWP and 21 percent failed to complete the number of court-ordered days. In 2018, 6 percent of participants failed to report to the program and 25 percent failed to complete the number of court-ordered days. In 2019, less than one percent of participants failed to report to the program and 27 percent failed to complete the number of work program days ordered by the court.

Program Expenditures and Revenues: Most of the CWP budget consists of staff wages and benefits to supervise work crews and provide mandatory reporting to the courts. In 2017 and 2018, the CWP had eight crew chiefs, two caseworkers, and one administrative specialist which cost $1,384,106 in 2017 and $1,369,555 in 2018 and generated revenues of $533,626 in 2017 and $719,836 in 2018.

Assessment of Options: The workgroup narrowed down the options to the following list and compared the benefits and challenges of each option to CWP.

Verbal admonishment: The sentence or sanction would be a verbal reprimand or warning from the court to the individual.

Self-Directed Community Service: A sanction or sentence ordered by the court as a condition of release from incarceration or a form of restitution for low-level infractions, an individual is required to volunteer with a community or civic organization.

Reinstate Community Work Program: A reinstated CWP, if returned to its pre-pandemic status of 2019, would have the capacity to run four teams of 10 participants supervised by one crew chief for each team.

A Hybrid Version of CWP: A hybrid version of CWP could have a CCD coordinator collect work orders and dispatch program participants to different departments around King County (e.g., FMD, Parks, Solid Waste) to assist with projects that require extra help.

Eliminate all Legal Financial Obligations: Legal Financial Obligations (LFOs), monetary sanctions which are imposed by the court as punishment for an infraction or as an additional cost of adjudication. While the mandatory minimum LFO is $600, courts have historically assessed as much as $1,300 – more than two times the mandatory minimum. The option of eliminating all LFOs would require making changes to Washington State Statute.[7]

Preferred Option: The Executive has not identified a preferred option for CWP due to the continued uncertainties of COVID-19. Of the options identified, a revised, or hybrid CWP option would be the most practical alternative and will be considered in the 2023-2024 budget process.

[6] Non-criminal traffic tickets occur when drivers violate laws that regulate vehicle operation on streets and highways. Example: speeding ticket.

[7] RCW 9.94A.760

III. Background

Department Overview: The Department of Adult and Juvenile Detention (DAJD) operates three detention facilities and various community supervision programs for pre- and post-trial defendants throughout King County. The Community Corrections Division (CCD) is a division within DAJD. The Community Work Program (CWP) has been operating in the Community Corrections Division since 2003. Prior to 2003, CWP was a program operated by the King County Facilities Management Division.

Key Historical Context: King County has operated work crews since Public Health — Seattle and King County, formerly known as the Seattle-King County Department of Public Health, began the first program in 1981.

In 1990, the Seattle-King County Public Health Department's North Rehabilitation Facility (NRF) was launched. The purpose of the NRF work crew was to provide vegetation removal, landscape maintenance, and litter removal at 10 Park and Ride lots, primarily in south King County. In the mid-1990s, NRF was the first King County work crew to provide contracted services for the cities of Shoreline and Mercer Island. This service was soon expanded to include the cities of Lake Forest Park and Kenmore.

From 1989 through 2002, DAJD and the Department of Executive Services (DES) Facilities Management Division (FMD) partnered with community and public agencies to provide community service opportunities for pre- and post-trial participants.

From January 1, 2017 to December 1, 2019, the number of contracts for CWP grew to include:

- City of Lake Forest Park
- City of Newcastle
- City of SeaTac
- City of Issaquah
- Seattle City Light
- City of Kenmore
- City of Burien
- City of Tukwila
- Snoqualmie Indian Tribe
- King County Metro

In 2002, per Ordinance 14561, the Community Corrections Division was established within DAJD. [8] The County's work crew programs were then consolidated into the Community Work Program (CWP). [Appendix A]

The CWP was designed to provide diversion from jail for individuals who had low-level felony or misdemeanor charges who were identified as low-risk for violating the conditions of the court (COC); and to satisfy court-ordered sanctions and/or financial obligations. [9] Individuals were sentenced by the court directly to CWP, where they could work eight hours in exchange for $150 off their fines, regain their driver's license, or complete the terms of their sentence. CWP projects typically included various types of landscaping, habitat restoration and invasive species removal. CWP crews functioned year-round and offered services Wednesday through Sunday. Municipal, District, and Superior courts had the

[8] *Ordinance 14561* [Link]

[9] Cases involving less serious violence that does not result in injury, less serious economic or property offenses, burglaries, car thefts, and other offenses.

option to sentence individuals to work crews to perform supervised manual labor for various public service agencies. [Appendix B]

In 2015, the CWP reporting site was moved from the Yesler Building in downtown Seattle to a warehouse on Hiawatha Place in south central Seattle to securely store heavy equipment and provide a more accessible location for participants to access the work crew vans. To provide greater accountability for CCD staff, GPS tracking devices were added to each van to monitor the location of the work crew and the length of time at each site. Additionally, a program manager was hired to supervise the program and conduct spot checks in the field on each work crew.

In 2018 the program expanded the program by serving court-ordered participants charged with low-level felony crimes. CWP worked with the courts to improve the likelihood of successful completion of the program by reducing the number of sentenced or ordered days to five or less. Additionally, CWP became a part of the Regional Relicensing Program where eligible participants could volunteer their time to satisfy their court-ordered legal financial obligations (LFOs) at a rate of $150 per day.[10]

From January 1, 2017 to December 31, 2019, 6,027 unique participants with 8,375 cases were ordered to the Community Work Program and worked 320,164 hours.

Legal Financial Obligations and CWP

Legal Financial Obligations (LFOs) are monetary sanctions that are imposed by the court as punishment for an infraction or as an additional cost of adjudication. While the mandatory minimum LFO is $600, courts have historically assessed as much as $1,300 – more than two times the mandatory minimum. In 2014, Washington State Administrative Office of the Court (AOC) data shows that Washington State courts assessed over $350 million in LFOs to defendants. These amounts varied by court type with district courts assessing the most with $200 million, followed by municipal courts at $100 million, and superior courts at just under $50 million. [Appendix C]

LFOs have a disproportionate impact on the Black and Latinx community in King County. According to the 2017 Seattle Municipal Court Legal Financial Obligations data, it was identified that people of color are ordered LFO debt more frequently than white people in Seattle.

> *"In 2017, Black drivers in Seattle were issued 2.6 times more traffic infractions with LFOs per capita than were white drivers. Latino/a drivers were issued 1.7 times more traffic infractions than white drivers. American Indians/Alaska Natives were issued LFOs for criminal non-traffic offenses at a per capita rate 6.7 times higher than the rate for white Seattle residents. Non-traffic infraction LFOs were ordered 3.7 times more frequently for American Indians/Alaska Natives than for whites, and Black Seattleites were issued LFOs for non-traffic infractions at a rate 3.1 times higher than white drivers."*[11]

LFO debt has been found to contribute to loss of transportation, housing insecurity, and increased police contact. Providing alternative ways to satisfy LFOs prevents formerly incarcerated people and those with traffic fines from sinking further into debt. The CWP is the only alternative to incarceration identified and considered by the workgroup that enables participants to satisfy LFO debt. It was

[10] King County Relicensing Program

[11] Brief for the Respondent as Professors Amicus Curiae re: *Seattle Municipal Court v. Stephen Long*

determined that any alternatives to CWP should include a way to mitigate the potentially long-term debt of LFOs.

Key Current Conditions: As a result of funding challenges, CWP staff was decreased by half in the 2019-2020 Adopted Biennial Budget. Staff were reduced from eight crew chiefs to four, and from two to one caseworker. The staffing reductions also reduced the maximum allowable number of participants from 80 per day to 40 participants per day.

In March 2020, the program was suspended per a state mandated shutdown due to the COVID-19 global pandemic. At that time, there were four crew chiefs and over 1,100 active individual participants. The program had a maximum capacity of 40 participants per day prior to closure. Individual cases that were in effect at the time of the program suspension were referred to the courts for disposition.

As of January 1, 2021, the Community Work Program was closed permanently as a cost-saving measure in response to reduced general fund and contracting agency revenues due to the COVID pandemic.

Report Methodology: Per Ordinance 19210, DAJD convened a workgroup of representatives from the DAJD Community Corrections Division, the Department of Adult and Juvenile Detention Administration Division, Prosecuting Attorney's Office, Department of Public Defense, Office of Performance, Strategy and Budget, Drug Court, Department of Community and Human Services, Neighborhood House, and the District Court Chief Presiding Judge. [Appendix D] The purpose of the work group was to identify and provide alternatives to the CWP. The work group's first meeting was February 16, 2021, and meetings were held approximately every month until the final meeting on June 21, 2021. The work group provided input into this report by gathering a list of options for CWP alternatives and reviewing CWP participant data. Additionally, CWP is used as an alternative to incarceration, therefore, the workgroup identified recommended practices for alternatives to incarceration collected from a literature review of reports published by criminal justice reform advocates.

Former CWP participants who were active in the program from January 2017 to December 2019 were sent an electronic survey and were asked to provide feedback on the CWP to help the workgroup understand the program from an individual perspective and what factors should be considered in developing alternatives. The survey was open for 15 days from May 7, 2021 to May 22, 2021. Over 1,240 emails were sent to past participants; 107 surveys were completed. The sample size is small and, therefore, the respondent population does not represent the demographics of the CWP participants. However, the overall individual rating of the CWP from those taking the survey indicated the program provides value.

Data Methodology: All collected data about an individual utilizing CWP is stored in the DAJD ComCor database and was entered by CWP caseworkers. Information regarding an individual's program status (active/inactive) is entered in searchable fields. Information about "Notice of Information" (NOI) or "Notice of Violation" (NOV) is recorded in the notes section of ComCor and due to limitations of the system, cannot be accessed via a search or extracted with a data query.

CCD was unable to obtain information about case resolution for this report. Information about how cases are resolved is part of individual court records. The courts could not provide data to DAJD regarding case resolution.

The data gathered for this report was organized, analyzed, and visualized by DAJD analysts. Financial information provided in this response was provided by DAJD Finance and confirmed by the King County Office of Performance, Strategy and Budget. The analyzed data and recommended practices identified by DAJD were presented to the workgroup to help inform decision-making. The group reviewed an early draft of this report. Statutory legal analysis was provided to DAJD by the Prosecuting Attorney's Office.

IV. Report Requirements

A. Review of CWP Legal Restrictions

"A review of the legal restrictions, under state statute and county code, on who can participate in a community work program, either as an alternative to secure detention or for the mitigation of legal financial obligations."

The legal restrictions pertaining to who can participate in a community work program, either as an alternative to secure detention or for the mitigation of legal financial obligations, come from state statutes, King County code provisions, conditions imposed by the court, and case law.

Pursuant to King County Code 2.16.120(A)(1), DAJD, through the community corrections division, shall administer programs that provide alternatives to confinement in the adult correctional facilities.[12] Pursuant to KCC 2.16.122(B), the community corrections division must implement alternatives to adult detention, including but not limited to work crew, based on screening criteria approved by the superior and district courts.[13] It must also accept from the prosecuting attorney's prefiling diversion program, persons arrested for certain misdemeanor offenses for placement on work crews.

The term "work crew" has more than one definition.

Pursuant to RCW 9.94A.725, "work crew" refers to a program within which defendants who are convicted of a felony are sentenced to 35 hours per week of civic improvement.[14] Offenders sentenced for a sex offense are not eligible for this program.

Alternatively, participating in a community work program that is court ordered at less than 35 hours per week is considered "community restitution" as defined under RCW 9.94A.030 ("compulsory service, without compensation, performed for the benefit of the community by the offender.")[15]
RCW 9.94A governs when community restitution can be ordered by the court.[16]

- Per RCW 9.94A.505, community restitution can be imposed when no sentence range exists for the crime.
- Per RCW 9.94A.633, community restitution can be imposed in lieu of confinement for violating conditions of sentence.
- Per RCW 9.94A.6333, legal fines can be converted to community restitution if the failure to pay such financial obligation is found to be non-willful.
- Per RCW 9.94A.670, community restitution can be imposed as part of a Special Sex Offender Sentencing Alternative suspended sentence.
- RCW 9.94A.680 provides limitations on when total confinement can be converted to community restitution.

[12] King County Code 2.16.120(A)(1) [Link]
[13] KCC 2.16.122(B) [Link]
[14] RCW 9.94A.725 [Link]
[15] RCW 9.94A.030 [Link]
[16] RCW 9.94A [Link]

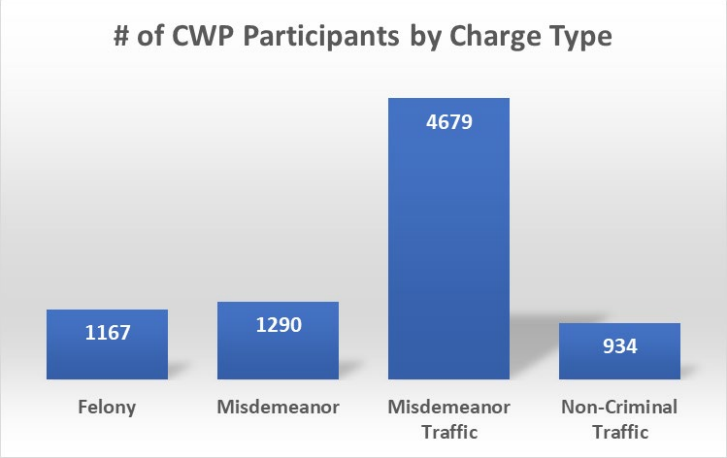
Furthermore, King County Superior Court imposes restrictions on the use of the Community Work Program. For example, superior court-imposed limits pertaining to how many days of work crew could be imposed for employed defendants in comparison to defendants who were not employed.

RCW 9.94A (also known as the Sentencing Reform Alternative – SRA) does not apply to district courts. Instead, case law makes it clear that district court have wide discretion to impose any reasonable sentence that is less than one year in jail and a $5,000 fine. As such, criteria implemented by district court will determine which defendant can be sentenced to work crew.

B. Annual Program and Individual Data: 2017-2019

From January 1, 2017 to December 31, 2019, 6,027 unique individuals with 8,375 cases were referred to the Community Work Program by various courts. The charges ran from misdemeanor criminal traffic violations such as driving under the influence (DUI) and reckless endangerment, to nonviolent felony charges such as violations of the Uniformed Control Substances Act (VUCSA) and theft 1. Some CWP participants have had multiple charges and cases during the timeframe requested by Council. Therefore, the program data below provides counts by cases rather than unique individuals to provide an accurate account of program usage by the courts.

Figure 1: CWP Cases by Charge Type



During the specified time frame, 89 percent of participants were ordered to CWP for criminal cases, and 11 percent were ordered for non-criminal traffic tickets.[17] Participants with fines, fees, and sanctions provided unpaid labor via CWP to satisfy their legal financial obligations at a rate of $150/day.

[17] Non-criminal traffic tickets occur when drivers violate laws that regulate vehicle operation on streets and highways. Example: speeding ticket.

Municipal, district, and superior courts in King County referred individuals to CWP. Figure 2 provides a list of courts that ordered 6,027 unique individuals, representing 8,375 cases to the program from January 1, 2017 to December 31, 2019. A total of 320,164 hours were ordered to CWP. Approximately 5 percent were pretrial orders, and 95 percent were post-trial orders.

Figure 3 below provides a count of CWP referrals by type of charge and the court that issued the orders

Figure 2: Number of Referrals and Hours Sentenced by Court

Court	# of Cases	# of Hours Sentenced
Auburn District	2	64
Bellevue District Court	332	18964
Bothell Muni	39	2408
Burien District Court	1082	33760
Drug Court	509	7968
Federal Way Muni	1	160
Issaquah District Court	122	11020
Kent District Court	1	240
King County Superior Court	81	7752
Lake Forest Park Muni	6	320
Mental Health Court	7	88
MRJC District Court	1530	42140
Other Court	23	1360
PAO Referral	81	648
Redmond District Court	1585	58776
Redmond Muni (DC)	1	64
Seattle District Court	2296	76284
Shoreline District Court	131	7672
Superior Court Kent	159	16084
Superior Court Seattle	320	32260
Tukwila Muni	65	2076
Vashon Island (DC)	2	56
Grand Total	**8375**	**320164**

Figure 3: Number of Court Referrals by Charge

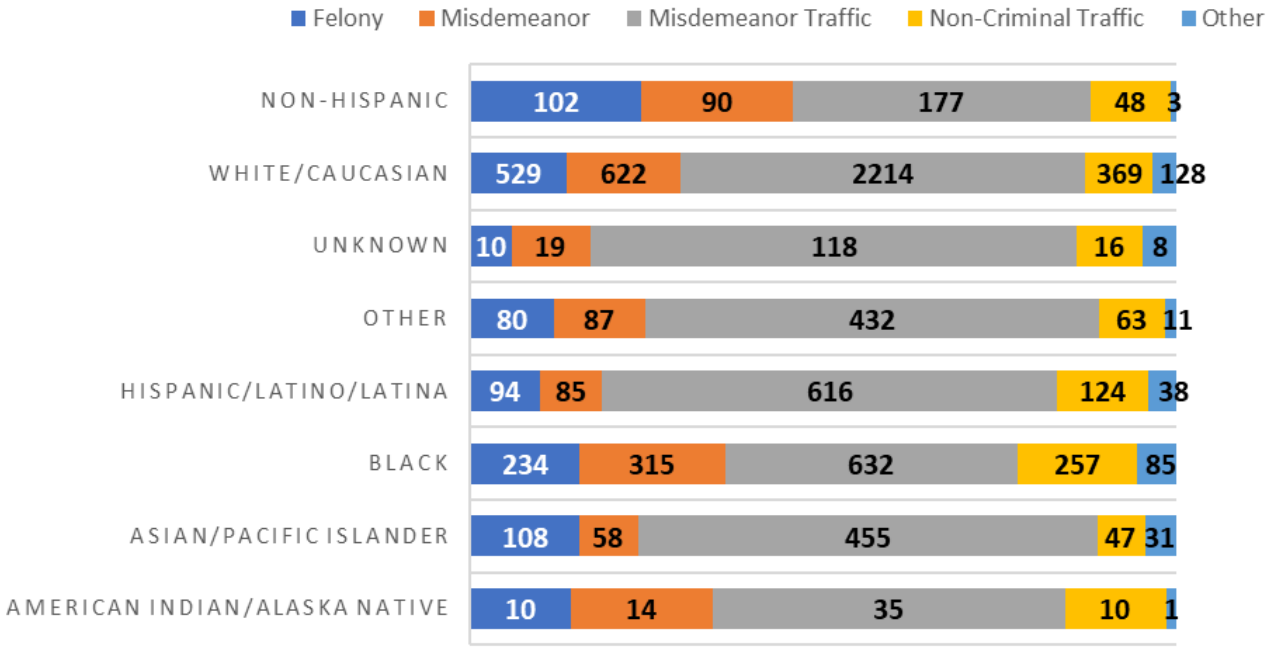
Court	Felony	Misdemeanor	Misdemeanor Traffic	No Charge Identified	Non-Criminal Traffic	Other	Grand Total
Auburn District		2					2
Bellevue District Court	10	178	105		33	6	332
Bothell Muni	7	17	7			8	39
Burien District Court	1	85	391		512	93	1082
Drug Court	489	19	1				509
Federal Way Muni		1					1
Issaquah District Court	1	31	72		15	3	122
Kent District Court		1					1
King County Superior Court	60	19	2				81
Lake Forest Park Muni	1	2	2			1	6
Mental Health Court		7					7
MRJC District Court	16	206	1291		4	13	1530
Other Court	1	6	16				23
PAO Referral	35	5				41	81
Redmond District Court	20	214	1294	1	28	28	1585
Redmond Muni (DC)		1					1
Seattle District Court	212	274	1396	1	337	76	2296
Shoreline District Court	4	48	77		1	1	131
Superior Court Kent	96	43	5			15	159
Superior Court Seattle	214	82	9	3	1	11	320
Tukwila Muni		48	10		3	4	65
Vashon Island (DC)		1	1				2
Grand Total	**1167**	**1290**	**4679**	**5**	**934**	**300**	**8375**

Figure 4: Black participants were 24 percent of the CWP population in 2017, 21 percent in 2018, and 19 percent in 2019. Similarly, Latinx participants comprised 11 percent of the CWP population in 2017, 12 percent of the CPW population in 2018, and 11 percent of this population in 2019. As data demonstrates, individuals from these groups make up a significant portion of the participants ordered to CWP programming for misdemeanor traffic violations.

Figure 4: Number of Court Referrals by Race 2017-2019

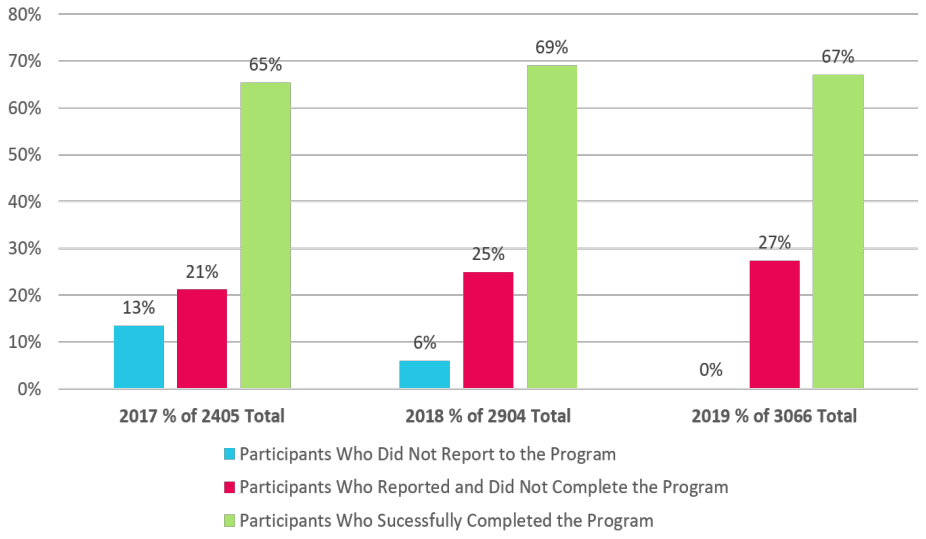
Race	2017	2018	2019	Total
American Indian/Alaska Native	25	21	33	79
Asian/Pacific Islander	193	273	298	764
Black	567	622	594	1783
Hispanic/Latino/Latina	260	355	342	957
Other	169	46	104	319
Unknown	53	57	89	199
White/Caucasian	1138	1530	1606	4274
Grand Total	**2405**	**2904**	**3066**	**8375**

Figure 5: CWP Participation by Race and Charge Type 2017-2019



During the three-year time frame of data called for in the proviso, approximately two-thirds of the participants completed the number of court-ordered work program days.[18] In 2017, 13 percent of the participants did not report to CWP, and 21 percent failed to complete the number of court-ordered days. In 2018, six percent of participants failed to report to the program and 25 percent failed to complete the number of court-ordered days. In 2019, less than one percent of participants failed to report to the program and 27 percent failed to complete the number of work program days ordered by the court. [Figure 6]

Figure 6: Individual Compliance Rate by Year



[18] Successful completion occurs when individuals satisfy all days ordered to CWP. Individuals with Closed Non-Compliant status started the program but did not satisfy the number of days ordered. Withdrawn status indicates individuals that never showed up for programming.

C. Program Expenditures and Revenues

As shown in Figure 7, most of the CWP budget consisted of staff wages and benefits to supervise work crews and provide mandatory reporting to the courts. In 2017 and 2018, the CWP employed eight crew chiefs, two caseworkers, and one administrative specialist. As a result of funding challenges, program staff was reduced to four crew chiefs, one caseworker, and one administrative specialist respectively in the 2019-2020 biennium budget. This reduced the maximum allowable number of participants from 80 participants per day to 40 participants per day.

Figure 7: CWP Expenditures and Revenues 2017-2019

CWP Actuals 2017-2019			
Expenditures	**2017**	**2018**	**2019**
SALARIES/WAGES	698,523	782,000	564,630
PERSONNEL BENEFITS	315,569	381,711	246,942
SUPPLIES	59,327	52,402	44,211
SERVICES-OTHER CHARGES	159,664	28,839	36,058
INTRAGOVERNMENTAL SVCS	151,023	123,338	66,122
APPLIED OVERHEAD		1,264	747
CAPITAL OUTLAY			
TOTAL EXPENDITURES	**$1,384,106**	**$1,369,555**	**$958,710**
Revenues	**2017**	**2018**	**2019**
TOTAL REVENUES	**$533,626**	**$719,836**	**$453,053**

When CWP moved to CCD in 2003, it was envisioned that contracts with other jurisdictions for services would fund the program, thereby making the CWP budget neutral. While this did not materialize, the CWP generated revenue to cover approximately 46 percent of the program expenditures. [See Figure 7]

Community Work Program Utilization by Organization		
Prosecuting Attorney's Office	**Superior Court**	**District Court**
▪ As a community service sentencing alternative for those determined to be low-risk, misdemeanor defendants. *(Approximately 75 percent of PAO referrals are sentenced to five days or less of work crew (over half are working three days or less)* ▪ As a pre-filing diversion program for persons arrested for certain low-level misdemeanor offenses.[19] ▪ As a sanction for Contempt of Court cases.	▪ Assist those who would not otherwise be able to satisfy the payment of fines to do so. One - hour day of work crew generally offsets $150 in fines. ▪ As a sanction for the King County Drug Diversion Court. ▪ Enables participants to complete court-ordered community service hours. *(Superior Court referrals are sentenced to an average of 7.5 days of work crew)*	▪ Help people get their driver's licenses back through the King County Relicensing Program.[20] Participants chose work crew as a way to pay fines related to the suspension or revocation of their driver's license at a rate of $150 per day. ▪ Assist those who would not otherwise be able to satisfy the payment of fines to do so. One 8-hour day of work crew generally offsets $150 in fines. ▪ Enable participants to complete court-ordered community service hours. *(District Court referrals to CWP are sentenced to an average of 4.5 days of work crew)*

[19] Adult Misdemeanor Pre-Charging Diversion Program (AMP) diverts criminal cases from formal court proceedings during the pre-charging stage - before the case is filed – with the intention of saving judicial, prosecutorial, jail, and defense resources. This Diversion Program is also intended to give offenders the opportunity to accept responsibility for their actions by providing a service to the community. In return, the offender benefits by avoiding the criminal charge on his/her record.

[20] King County Relicensing Program

D. List and Description of Potential Alternatives to CWP

This section provides potential alternative program options as called for by the proviso. The list and descriptions of potential alternatives identified in this sub-section were generated by the workgroup and DAJD staff.[21] To inform the potential options, the workgroup considered quantitative data extracted from CCD's ComCor reporting system, qualitative data gathered from the CWP participant survey, and a description of alternatives identified through a literature review.

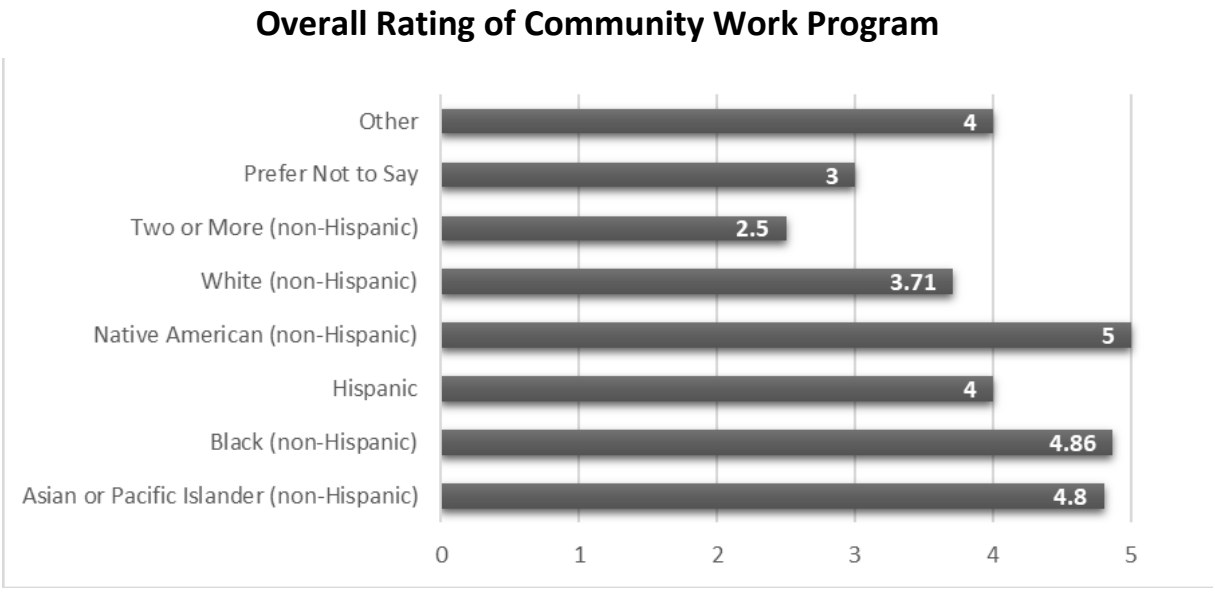
Workgroup Approach

To begin to identify potential alternatives for CWP, the workgroup members shared information on how the program was used by their organization as well as their perspective on perceived benefits and risks of the program for participants. Based on feedback from workgroup members, the PAO and Superior and District courts utilized the CWP program option as follows:

Next, to help the workgroup better understand the benefits and challenges of the CWP program from a participant's point of view, CCD sent an individual survey to gather the "voice of the customer." People who participated in CWP from January 2017 through December 2019 were asked to participate in a short survey [Appendix E]. The survey was open from May 7, 2021 to May 22, 2021. More than 1,240 survey invitations were sent to past individual participants. Of those sent, 107 surveys were completed.

Notably, the sample size is small and therefore, the survey respondents cannot represent the demographics or opinions of the CWP individual participant experience. The mean rating of the CWP from those taking the survey was 3.98 (with a maximum score of 5) indicating the program provided value to those responding to the survey. [Figure 8]

Figure 8: "How would you rate your experience with the Community Work Program?" Rating by Race



[21] See *Background* section of the report for a description of the workgroup.

The following is a sample of individual responses to the question "How was the program helpful?"

> *"Program gives you a second chance to correct things and not to repeat the same infractions. Program was serious enough for you to understand the impact of one's actions and regret those actions but not extremely harsh as to affect one's future or prospects."*
>
> *"Better for the community than just sending someone to jail taking up tax-payers money with no return to the community. Let's us be able to work off our sentence while still being able to provide for our families instead of just throwing us into a tank that does nothing but take up resources and space that only hinders us from being able to be a productive member of society."*
> *"When you put the community at risk you should give back to the community to say you are sorry. Money is easy but giving up your time and working makes you reflect."*
>
> *"I was really nervous, but everyone was nice, and it was a better experience than I expected."*
> *"Honestly every time I cut my grass at my house; I think about community work program in a good way. It's a great program."*
>
> *"It provides a way to avoid wasting jail resources for people who aren't normally part of the criminal system and are just trying to move past one-time criminal offenses."*

Based on participant feedback and CWP stakeholders (court staff, prosecuting attorney's office, community service providers, DAJD staff), the benefits of the program were identified by the workgroup as follows:

Participant	Stakeholder
Allows participants to continue to work and care for their families without significantly disrupting their lives	Holds the individual accountable for the infractions committed
Holds the individual accountable for the infractions committed	Much higher completion rate than self-directed community service (65 percent of CWP participants completed the court-ordered number of days as compared to 40 percent of community service participants completing court-ordered number of days)
Good use of public resources	Aids in reducing the population of the jail facilities
Way to give back to the community,	Is a generally low-risk alternative to incarceration

Individual feedback provided by survey respondents regarding program improvements fell into four general categories: A) areas of the quality of the work assignments; B) the location of the reporting site; C) how long it took to get into the program; and D) consistency of supervision. The individual responses to the question "How can the program be improved?" are provided in Appendix E.

Some of the workgroup members believe that more individuals would be incarcerated without having CWP as an option. As noted earlier in this report, the CWP was suspended per state mandated shutdown due to the COVID-19 global pandemic. At that time, there were over 1,100 active individual participants. Individual cases that were in effect at the time of the program suspension were referred to the

courts for disposition. Once a case is referred to the court, the CCD does not have access to information about how the case was resolved and the courts were not able to provide the data. Therefore, there is no way to determine if the individual was ordered to electronic home detention, served the remainder of their sentence in custody, if the time was suspended until after the COVID restrictions were lifted, or if the defendant was released as "time served." However, it was suggested that those who would ordinarily be ordered to CWP would likely be incarcerated. There was no way to prove or disprove this assertion. Referrals to programs are within the judge's discretion and there is no available data that could help assess the likelihood of incarceration if the CWP program did not exist.

Potential Alternative Program Options

This section provides potential alternative program options as called for by the proviso. To evaluate the potential options the workgroup considered quantitative data extracted from CCD's ComCor reporting system, qualitative data from the CWP participant survey, and a description of recommended practices identified through a literature review. After an extensive literature review, it was determined that the United Nations list of alternatives to incarceration provided the most complete list of options with explanations of how the options could be applied.

Alternatives to Jail: As CWP is an alternative to jail, the workgroup reviewed a list of alternatives to jail published by the United Nations (see Appendix F). [22] An additional option for consideration was identified by the workgroup. The following list comprises the alternatives identified by the workgroup and are noted with an asterisk (*).

1. **Economic sanctions and monetary penalties**, in which individuals are ordered to pay a fine in lieu of incarceration.
2. **Confiscation or an expropriation order**, where individuals are ordered to pay a sum of money; enforced as if it were a fine.
3. **Restitution to the victim or a compensation order**, where the individual pays a fine or fee to victims.
4. **Verbal sanctions**, such as admonition, reprimand, and warning.
5. **Conditional discharge**, or parole/probation which requires that individuals obey all laws and remain in contact with authorities.
6. **Suspended or deferred sentence**, or release from secure detention with a promise to not re-offend during the remainder of the sentence.
7. **Probation and judicial supervision** or ordered regular check-ins with authorities.
8. **Self-directed community service order**, where individuals must self-direct and volunteer time with an organization to fulfill the court order.
9. **Referral to a day center,** such as the Community Center for Alternative Programs (CCAP).
10. **Electronic Home Detention**, a program that allows individuals to serve their sentence at home, while being monitored electronically.
11. **Reinstating the Community Work Program,** which provides an opportunity for individuals to complete court-ordered community service or satisfy court-ordered fines and fees by volunteering their time on County-supervised service projects. *
12. **Eliminating Legal Financial Obligations** (LFOs) for those who are unable to pay*

[22] Zyl Smit, Dirk van. 2007a. "Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment." New York: United Nations. [Link]

E. Assessment of Potential Options

The workgroup added options 11 and 12 to the list above as additional alternatives to be considered. Some of these options were not included in the workgroups deliberations because they are already offered by the King County legal system. The alternatives were narrowed down to a more refined list of five options based on the workgroup discussion of the following questions:

- Is it appropriate for the type of participant?
- Will the alternative reduce recidivism?
- Can it be applied equitably?
- Will it increase costs in another part of the system?
- Will it keep our community safe?
- Does it provide a benefit to those being sentenced?
- Will it have the potential to cause more harm to those being sentenced?

The options assessed below are the result of workgroup discussion of the issues listed above relative to the benefits and challenges of the CWP.

Verbal Admonishment:
The sentence or sanction would be a verbal reprimand or warning from the court to the individual. Since there are no orders to enforce, fines to collect, or required supervision, it requires very little administrative infrastructure and is the least restrictive and most cost-effective alternative to incarceration. Except in the case of mandatory minimum sentencing, this is currently an option for judicial discretion and can be issued on a case-by-case basis.[23] This option is currently available to all jurisdictions in Washington State.

Some members of the workgroup observed that many of the participants' fines and sanctions were converted to suspended sentences or time served due to the COVID pandemic and suggested this practice continue.

Option: Verbal Admonishment	
Benefits	**Challenges**
No administrative or program costs for DAJD	Community, victims, and stakeholders may perceive this as not holding the defendant accountable
Provides some accountability for those least likely to reoffend	May not be applied equitably unless there are clear guidelines
Reduces contact with the criminal legal system	Does not provide for participants who are ordered to CWP in lieu of incarceration
Resolves the use of discretionary fines and fees	

[23] Mandatory minimum sentencing is a fixed sentence which means a person convicted of a crime must be imprisoned for a minimum term, regardless of culpability or other mitigating factors, as opposed to leaving the length of punishment up to judges' discretion. "RCW 9.94A.540: Mandatory Minimum Terms." 2014. Wa.gov. 2014. [Link]

Self-Directed Community Service

An individual is sometimes required to volunteer with a community or civic organization as a sanction or sentence ordered by the court. Self-directed community service can be a condition of release from incarceration or a form of restitution for low-level infractions. Identifying an organization and securing an agreement to provide volunteer services is the responsibility of the sentenced individual. Historically, self-directed community service puts an administrative burden on community organizations to document and confirm the completion of community service hours.

From 2005 to 2018, CCD offered a program called Helping Hands Program (HHP), to assist participants to perform court-ordered community service in finding an organization to complete their service hours. The program also monitored compliance and reported non-compliance to the courts. HHP had challenges, similar to court-ordered individuals, finding sites and organizations that would accept program participants with criminal records. The program had a 40 percent completion rate. In January 2019, the program was discontinued due to budget cuts and many of the HHP cases were transferred to the CWP.

RCW 9.94A.725 also allows defendants to be granted credit towards weekly productivity hours and sober support requirements by completing pro-social activities such as a 12-Step program for substance use disorder, participating in therapeutic treatments, yoga, etc. [24] Seattle's Drug Diversion Court uses this approach with defendants who are in the program. [Appendix G]

Option: Self-Directed Community Service	
Benefits	**Challenges**
Gives credit for activities that can change behavior	Cost and simplicity of monitoring
Option for individuals to meet court requirement	Potential for increased chance of failure to complete hours required by the court
Allows more flexibility in satisfying the court order	Difficulty finding organizations willing to provide suitable service opportunities
Expands the definition of "community service" could addresses the problem of not being able to find a volunteer opportunity and furthers therapeutic and other treatment needs	

Reinstate Community Work Program

A reinstated CWP, if returned to its pre-pandemic status of 2019, would have the capacity to run four teams of 10 participants supervised by one crew chief for each team. The Community Work Program was eliminated in the County's 2021-2022 adopted budget. CWP provided the opportunity for more than 6,000 unique individuals to satisfy their legal financial obligations and/or complete their sentence/sanction using a less restrictive alternative to jail or electronic home monitoring. The structured community service program is supported by criminal legal system stakeholders to provide accountability for the 89 percent of participants facing criminal sanctions and 11 percent of participants with non-criminal traffic violations to satisfy their fines without unduly impacting the ability to work or care for their families. Other improvements could be made based on feedback gathered for this proviso response to provide more value for the participants, the contracting cities, and the County. CWP also functioned as

[24] RCW 9.94A.725

an alternative to incarceration if the individual failed to meet the requirements of other programs or sanctions. Without CWP, the only options for addressing non-compliance are incarceration, electronic home monitoring, or dismissal of the alternative sanction and/or sentence.

Option: Reinstate Community Work Program	
Benefits	**Challenges**
Opportunity to complete community service requirements and satisfy LFOs	Cost
Alternative to incarceration	May not result in jail ADP savings
May reduce ADP in adult facilities	

A Hybrid Version of CWP

A hybrid version of CWP could have a CCD coordinator collect work orders and dispatch program participants to different departments around King County (e.g., FMD, Parks, Solid Waste) to assist with projects that require extra help. The participants would be "supervised" by the on-site lead who would report the hours to CCD. The CWP coordinator would subsequently report the hours to the courts. The program coordinator could also collect and send compliance reports directly to the courts.

Because the pre-COVID CWP program was closed in part due to budget pressures, a hybrid version of CWP could resolve the challenges associated with the self-directed community service option and provide a less expensive alternative to a supervised community work program option. The largest expense in the former CWP was staffing followed by equipment storage and maintenance. Replacing the work crew model with a dispatch model would require significantly less staff and, therefore, reduce the cost of operations. If all courts were willing to give credit for participation in pro-social activities like the Drug Court program, the coordinator could also collect reports from providers. Furthermore, a hybrid version of CWP could be a restorative justice model to help address systemic inequities that BIPOC communities face regarding LFOs.

Option: Hybrid Version of CWP	
Benefits	**Challenges**
Opportunity to complete community service requirements	Establishing and implementing departmental agreements and processes with a streamlined reporting system
Possible alternative to incarceration	Potential additional supervisory costs for the agencies that use the services
May reduce ADP in adult facilities	Potential labor issues
Potentially less expensive than the former CWP program[25]	

Eliminating all Legal Financial Obligations

For those deemed "too poor to pay," this option could be used to eliminate their LFOs. In the past, CWP has been used to provide this kind of relief. In *State v. Blazina*, 182 Wn.2d 827 (2015), each sentencing

[25] This benefit requires validation/confirmation about costs to departments

judge is required to make an individualized inquiry into a defendant's ability to pay before imposing discretionary LFOs. [Appendix H] In 2018, the Washington State legislature passed Engrossed Second Substitute House Bill 1783 that prohibits the imposition of certain LFOs on indigent defendants.[26] However, neither development allows courts to waive mandatory financial penalties, restitution, or forfeitures. Those who can't afford to pay are continually subject to court supervision and are at greater risk of more encounters with law enforcement.[27] The Seattle Municipal Court routinely reduces discretionary fees but cannot reduce mandatory minimum fines nor the interest that can accrue on those fines. [Appendix I] The option of eliminating all LFOs would require making changes to Washington State Statute.[28] Until this can be resolved, the court could avoid imposing non-mandatory LFOs and a fund could be created to provide LFO relief for mandatory minimum fines as well as municipal fines for indigent defendants.

The imposition of mandatory minimum legal financial obligations and disproportionate traffic tickets for the BIPOC community, are two justifications for reinstating the Community Work Program. Mandatory minimum fines start accruing interest on the day of sentencing. Even if the fines were limited to the statutory minimum, the accrued interest and subsequent collection fees could grow while the defendant is incarcerated or trying to rebuild their lives after release.[29] Fines, because of a traffic violation, can double within 15 days of receiving the infraction and interest begins to accrue. This creates a situation in which Black and Latinx individuals are more likely to be arrested for failure to pay which contributes to job loss and economic insecurity.

Until legal financial obligations are eliminated, there are no alternative options to the Community Work Program or a similar program that can serve the same objectives as the CWP. The CWP is the only type of program that offered a way to relieve the debt.

Option: Eliminate All Legal Financial Obligations	
Benefits	**Challenges**
Reduces or eliminates the LFO debt for the sentenced individual	Courts may not choose to limit fines to mandatory minimums
Improves the quality of lives most impacted by LFOs	Lost revenue for municipal and district courts
Reduces the cycle of criminal legal system involvement	Requires Washington State legislative changes

F. Identification of the Preferred Option and Rationale

The Executive has not identified a preferred option for CWP due to the continued uncertainties of COVID-19. Of the options identified, a revised, or hybrid CWP option would be the most practical alternative and will be considered in the 2023-2024 budget process.

[26] As defined by RCW 10.101.010

[27] Brief for the Respondent as Professors Amicus Curiae re: *Seattle Municipal Court v. Stephen Long*

[28] RCW 9.94A.760

[29] Interest is only accrued on restitution LFOs fines and fees; non-restitution LFOs do not accrue interest per RCW 10.82.090

V. Appendix

APPENDIX A: King County Ordinance 14561. 2002.
APPENDIX B: CWP Contracts and Work, (January 2017 – March 2020)
APPENDIX C: Harris, Alexes, and Mary Pattillo. 2021. Professors Amicus Curiae Brief in Support of Respondent, *City of Seattle v. Long*.
APPENDIX D: CWP Work Group Participant List
APPENDIX E: "King County Community Work Program Individual Survey." 2021
APPENDIX F: United Nations Office on Drugs and Crime. 2007. "Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment Criminal Justice Handbook Series." https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf.
APPENDIX G: King County Drug Diversion Court Healthy Social Activities
APPENDIX H: State v. Blazina. 2015. Washington Supreme Court.
APPENDIX I: Edwards, Frank, and Alexes Harris. 2020. "An Analysis of Court Imposed Monetary Sanctions in Seattle Municipal Courts."

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

December 17, 2002

Ordinance 14561

Proposed No. 2002-0363.3 **Sponsors** Sullivan

AN ORDINANCE relating to the organization of the executive branch; making technical corrections; and amending Ordinance 12075, Section 3, as amended, and K.C.C. 2.16.025, Ordinance 14199, Section 11, and K.C.C. 2.16.035, Ordinance 11955, Section 5, as amended, and K.C.C. 2.16.055, Ordinance 14005, Section 3, as amended, and K.C.C. 2.16.0755, Ordinance 14155, Section 5, and K.C.C. 2.16.07585, Ordinance 12529, Section 2, as amended, and K.C.C. 2.16.080, Ordinance 11955, Section 13, as amended, and K.C.C. 2.16.110, Ordinance 12432, Section 2, as amended, and K.C.C. 2.16.120, Ordinance 13720, Section 4, as amended, and K.C.C. 2.45.030, Ordinance 12075, Section 13, as amended, and K.C.C. 2.50.045, Ordinance 12076, Section 2, as amended, and K.C.C. 4.04.020, Ordinance 12076, Section 3, as amended, and K.C.C. 4.04.030, Ordinance 12076, Section 3, as amended, and K.C.C. 4.04.040, Ordinance 620, Section 4

(part), as amended, and K.C.C. 4.04.060, Ordinance 12076, Section 4 and K.C.C. 4.04.075, Ordinance 12076, Section 5, as amended, and K.C.C. 4.04.200. Ordinance 12076, Section 8, as amended, and K.C.C. 4.08.005, Ordinance 12076, Section 33, as amended, and K.C.C. 4.10.010, Ordinance 12076, Section 35, as amended, and K.C.C. 4.10.050, Ordinance 12076, Section 38, and K.C.C. 4.12.040, Ordinance 13983, Section 3, as amended, and K.C.C. 4.19.030, Ordinance 12045, Section 5, as amended, and K.C.C. 4.56.070, Ordinance 12394, Section 3, as amended, and K.C.C. 4.56.085, Ordinance 14214, Section 6, and K.C.C. 9.14.050, Ordinance 1709, Section 6, as amended, and K.C.C. 13.24.080, Ordinance 13147, Section 21, as amended, and K.C.C. 20.18.050, Ordinance 13274, Section 7, as amended, and K.C.C. 21A.37.070, Ordinance 13733, Section 10, as amended, and K.C.C. 21A.37.110, and Ordinance 13733, Section 15, as amended, and K.C.C. 21A.37.160.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 12075, Section 3, as amended, and K.C.C. 2.16.025 are each hereby amended to read as follows:

County executive. The county executive shall manage and be fiscally accountable for the office of management and budget((,)) and the office of ((~~regional planning and policy and the office of cultural resources~~)) business relations and economic development.

A. The office of management and budget functions and responsibilities shall include, but not be limited to:

1. Planning, preparing and managing, with emphasis on fiscal management and control aspects, the annual operating and capital improvement budgets;

2. Preparing forecasts of and monitor revenues;

3. Monitoring expenditures and work programs in accordance with Section 475 of the King County Charter;

4. Developing and preparing expenditure plans and ordinances to manage the implementation of the operating and capital improvement budgets throughout the fiscal year;

5. Developing and using outcome-based performance indicators to monitor and evaluate the effectiveness and efficiency of county agencies;

6. Formulating and implementing financial policies regarding revenues and expenditures for the county and other applicable agencies; ((~~and~~))

7. Performing program analysis, and contract and performance evaluation review;

8. Collecting and analyzing land development, population, housing, natural resource enhancement, transportation and economic activity data to aid decision making and to support implementation of county plans and programs, including benchmarks; and

9. Developing and transmitting to the council, concurrent with the annual proposed budget, supporting materials consistent with K.C.C. 4.04.030.

B. The office of ((~~regional planning an policy~~)) business relations and economic development functions and responsibilities shall include, but not be limited to:

1. ((~~Managing and coordinating the implementation by departments of Growth Management Act requirements;~~

~~2.~~)) Developing proposed policies to address ((~~strategic planning, regional planning,~~)) economic development ((~~and housing planning~~));

((~~3. Developing and overseeing the countywide program for implementation of the county's comprehensive plan including coordinating~~

~~a. the implementation of plans which are developed by departments;~~

~~b. the collection and analysis of land development, population, housing, natural resource enhancement, and economic activity data to aid decision making and to support implementation of county plans and programs, including benchmarks; and~~

~~c. the preparation of interlocal agreements between any combination of the county, cities and providers of necessary urban services such as sewer and water as needed to address common planning issues;~~

~~4. Coordinating county and regional planning with public and private agencies;~~

~~5.~~)) 2. Providing quarterly economic reports to the executive and the council that characterize trends in employment, unemployment, business operations including layoff warnings required under state law and other factors that are useful in understanding economic trends;

3. Establishing, fostering and maintaining healthy relations with business and industry;

4. Optimizing the value of county-controlled assets, such as the King County airport, as engines for economic growth, recognizing that it may be in the public interest to foster job creation expansion of the tax base rather than maximizing direct revenue to the county from a particular asset;

5. Managing programs and developing projects that promote economic development, assist communities and businesses in creating economic opportunities, promote a diversified regional economy, promote job creation with the emphasis on family-wage jobs and improve county asset management. A report on these activities shall be included in the quarterly report required under subsection B.2 of this section;

((~~6. Developing and managing housing programs and projects that implement Growth Management Act policies and have not been assigned to a department;~~

~~7.~~)) 6. Providing assistance to other county departments to determine if real property or other assets may be managed for economic development purposes to create jobs and expand private investment or administered in a manner that will provide additional revenue to the county;

((~~8. Managing children and family programs and provide administrative support to the children and family commission;~~

~~9.~~)) 7. Managing the boost, apprenticeship and business development programs including the following functions:

a. administering the discrimination and affirmative action in employment by contractors', subcontractors' and vendors' policies under K.C.C. chapter 12.16;

b. administering the boost program for the use of small economically disadvantaged businesses on county contracts under K.C.C. chapter 4.19; and

c. administering the federal Americans with Disabilities Act of 1990 and federal Rehabilitation Act of 1973, Section 504, policies related to obligations of contractors with the county; ((~~and~~))

((~~10.~~)) 8. Serving as the disadvantaged business enterprise liaison officer for federal Department of Transportation and other federal grant program purposes; and

9. Managing the county's landmark preservation program including the following functions:

a. administering landmark designation and regulation functions under K.C.C. chapter 20.62;

b. serving as the county's historic preservation officer under the county's certified local government agreement with the state and for federal grant program purposes;

c. administering the landmark rehabilitation and improvement loan program in partnership with local financial institutions, administering the special valuation program under chapter 84.26 RCW and assisting with the current use taxation program for cultural resources;

d. providing oversight and assistance to other county departments to ensure compliance with federal, state and local cultural resource laws; and

e. preparing and administering interlocal agreements between the county and cities related to landmark designation and protection services.

C. The executive may assign or delegate budgeting, ((~~and strategic planning~~)) business relations and economic development functions to employees in the office of the executive but shall not assign or delegate those functions to any departments.

((~~D. The office of cultural resources shall plan, manage and be responsible for administering the county cultural programs, including but not limited to arts, heritage and historic preservation.~~))

SECTION 2. Ordinance 14199, Section 11, and K.C.C. 2.16.035 are each hereby amended to read as follows:

Department of executive services. The county administrative officer shall be the director of the department of executive services ((~~shall be managed by the county administrative officer~~)). The department shall include the information and telecommunications services division, the records, elections and licensing division, the finance and business operations division, the human resources management division, the facilities management division, the administrative office of information resources management, the administrative office of risk management, the administrative office of emergency management and the administrative office of civil rights. In addition, the ((~~chief~~))county administrative officer shall be responsible for providing staff support for the board of ethics.

A. The duties of the information and telecommunications services division shall include the following:

1. Designing, developing, operating, maintaining and enhancing computer information systems for the county and other contracting agencies, except for geographic

information systems, which shall be administered by the department of natural resources and parks;

2. Managing the cable communications provisions set forth in K.C.C. chapter 6.27A;

3. Negotiating and administering cable television and telecommunication franchises ((~~pursuant to~~)) under K.C.C. chapter 6.27;

4. Providing telephone system design, installation, maintenance and repair;

5. Managing and operating the centralized printing and graphic arts services;

6. Providing internal communications and public information services including setting standards for and preparing informational publications, except to the extent to which the council decides, as part of the annual appropriation ordinance, to fund selected departmental level internal communications and public information services in certain departments or divisions; and

7. Administering the emergency radio communication system under K.C.C. chapter 2.58, but not including the radio communication and data system operated and maintained by the department of transportation.

B. The duties of the records, elections and licensing services division shall include the following:

1. Conducting all special and general elections held in the county and registering voters;

2. Issuing marriage, vehicle/vessel , taxicab and for-hire driver and vehicle and pet licenses, collecting license fee revenues and providing licensing services for the public;

3. Enforcing county and state laws relating to animal control;

4. Managing the recording, processing, filing, storing, retrieval((,)) and certification of copies of all public documents filed with the division as required((, ~~of all public documents filed with the division~~));

5. Processing all real estate tax affidavits;

6. Acting as the official custodian of all county records, ((~~per~~)) as required by general law, except as otherwise provided by ordinance; and

7. Managing the printing and distribution of the King County Code and supplements to the public.

C. The duties of the finance and business operations division shall include the following:

1. Monitoring revenue((,)) and expenditures for the county. The collection and reporting of revenue and expenditure data shall provide sufficient information to the executive and to the council. The division shall be ultimately responsible for maintaining the county's official revenue and expenditure data;

2. Performing the functions of the county treasurer;

3. Billing and collecting real and personal property taxes, local improvement district assessments and gambling taxes;

4. Processing transit revenue;

5. Receiving and investing all county and political subjurisdiction moneys;

6. Managing the issuance and payment of the county's debt instruments;

7. Managing the accounting systems and procedures;

8. Managing the fixed assets system and procedures;

9. Formulating and implementing financial policies for other than revenues and expenditures for the county and other applicable agencies;

10. Administering the accounts payable and accounts receivable functions;

11. Collecting fines and monetary penalties imposed by district courts;

12. Developing and administering procedures for the procurement of and awarding of contracts for tangible personal property, services, professional or technical services and public work in accordance with K.C.C. chapter 4.16 and applicable federal and state laws and regulations;

13. Establishing and administering procurement and contracting methods, and bid and proposal processes, to obtain such procurements;

14. In consultation with the prosecuting attorney's office and office of risk management, developing and overseeing the use of standard procurement and contract documents for such procurements;

15. Administering contracts for goods and ((~~such~~)) services that are provided to more than one department;

16. Providing comment and assistance to departments on the development of specifications and scopes of work, in negotiations for such procurements, and in the administration of contracts;

17. Assisting departments to perform cost or price analyses for the procurement of ((~~such~~)) tangible personal property, services((~~,~~)) and professional or technical services, and price analysis for public work procurements;

18. Developing, maintaining and revising as may be necessary from time to time the county's general terms and conditions for contracts for the procurement of tangible personal property, services, professional or technical services and public work;

19. Managing the payroll system and procedures, including processing benefits transactions in the payroll system and administering the employer responsibilities for the retirement and the deferred compensation plans; and

20. Managing and developing financial policies for borrowing of funds, financial systems and other financial operations for the county and other applicable agencies.

D. The duties of the human resources management division shall include the following:

1. Developing and administering training and organizational development programs, including centralized employee and supervisory training and other employee development programs;

2. Developing proposed and ((~~administer~~)) administering adopted policies and procedures for employment (recruitment, examination and selection), classification and compensation, and salary administration;

3. Developing proposed and administering adopted human resources policy;

4. Providing technical and human resources information services support;

5. ((~~Administering insured and noninsured benefits programs, including health care benefits, leave programs, deferred compensation and other special benefits, such as dependent care assistance and wellness and work/family programs~~)) Developing and managing insured and noninsured benefits programs, including proposing policy re

commendations, negotiating benefits plan designs with unions, preparing legally mandated communications materials and providing employee assistance and other work and family programs;

6. Developing and administering diversity management and employee relations programs, including affirmative action plan development and administration, management and supervisory diversity training and conflict resolution training;

7. Developing and administering workplace safety programs, including inspection of work sites and dissemination of safety information to employees to promote workplace safety;

8. Administering the county's self-funded industrial insurance/worker's compensation program, as authorized by Title 51 RCW;

9. Representing county agencies in the collective bargaining process as required by chapter 41.56 RCW;

10. Representing county agencies in labor arbitrations, appeals and hearings including those ((~~set forth~~)) in chapter 41.56 RCW and required by K.C.C. Title 3;

11. Administering labor contracts and ((~~provide~~)) providing consultation to county agencies regarding the terms and implementation of negotiated labor agreements;

12. Advising the executive and council on overall county labor and employee policies;

13. Providing labor relations training for county agencies, the executive, the council and others;

14. Overseeing the county's unemployment compensation program; ((~~and~~))

15. Developing and maintaining databases of information relevant to the collective bargaining process; and

16. Collecting and reporting to the office of management and budget on a quarterly basis information on the numbers of filled and vacant full-time equivalent and term-limited temporary positions and the number of emergency employees for each appropriation unit.

E. The duties of the facilities management division shall include the following:

1. Overseeing space planning for county agencies;

2. Administering and maintaining in good general condition the county's buildings except for those managed and maintained by the departments of natural resources and parks and transportation;

3. Operating security programs for county facilities except as otherwise determined by the council;

4. Administering all county facility parking programs except for public transportation facility parking;

5. Administering the supported employment program;

6. Managing all real property owned or leased by the county, except as provided in K.C.C. chapter 4.56, ensuring, where applicable, that properties generate revenues closely approximating fair market value;

7. Maintaining a current inventory of all county-owned or leased real property;

8. Functioning as the sole agent for the disposal of real properties deemed surplus to the needs of the county;

9. In accordance with K.C.C. chapter 4.04, providing support services to county agencies in the acquisition of real properties, except as otherwise specified by ordinance;

10. Issuing oversized vehicle permits, franchises and permits and easements for the use of county property except franchises for cable television and telecommunications;

11. Overseeing the development of capital projects for all county agencies except for specialized roads, solid waste, public transportation, airport, water pollution abatement((,)) and surface water management projects;

12. Being responsible for all general projects, such as office buildings or warehouses, for any county department including, but not limited to, the following:

a. ((~~A~~))administering professional services and construction contracts;

b. ((~~A~~))acting as the county's representative during site master plan, design and construction activities;

c. ((~~M~~))managing county funds and project budgets related to capital improvement projects;

d. ((~~A~~))assisting county agencies in the acquisition of appropriate facility sites;

e. ((~~F~~))formulating guidelines for the development of operational and capital improvement plans;

f. ((~~A~~))assisting user agencies in the development of ((~~C~~))capital ((~~I~~))improvement and ((~~P~~))project ((~~P~~))program ((~~P~~))plans, as defined and provided for in K.C.C. chapter 4.04;

g. ((~~F~~))formulating guidelines for the use of life cycle cost analysis and applying these guidelines in all appropriate phases of the capital process;

h. ((~~E~~))ensuring the conformity of capital improvement plans with the adopted space plan and approved operational master plans;

i. ((~~D~~))developing project cost estimates that are included in capital improvement plans, site master plans, capital projects and annual project budget requests;

j. ((~~P~~))providing advisory services, ((~~and/or~~)) feasibility studies or both services and studies to projects as required and for which there is budgetary authority;

k. ((~~C~~))coordinating with user agencies to assure user program requirements are addressed through the capital development process as set forth in this chapter and in K.C.C. Title 4;

l. ((~~P~~))providing engineering support on capital projects to user agencies as requested and for which there is budgetary authority; and

m. ((~~P~~))providing assistance in developing the executive budget for capital improvement projects; and

13. Providing for the operation of a downtown winter shelter for homeless persons between October 15 and April 30 each year.

F. The duties of the administrative office of risk management shall include the management of the county's insurance and risk management programs consistent with K.C.C. chapter 4.12.

G. The duties of the administrative office of emergency management shall include the following:

1. Planning for and providing effective direction, control and coordinated response to emergencies;

2. Being responsible for the emergency management functions defined in K.C.C. chapter 2.56; and

3. Managing the E911 emergency telephone program.

H. The duties of the administrative office of civil rights shall include the following:

1. Enforcing nondiscrimination ordinances as codified in K.C.C. chapters 12.17, 12.18, 12.20 and 12.22;

2. Assisting departments in complying with the federal Americans with Disabilities Act of 1990, the federal Rehabilitation Act of 1973, Section 504, and other legislation and rules regarding access to county programs, facilities and services for people with disabilities;

3. Serving as the county Americans with Disabilities Act coordinator relating to public access;

4. Providing staff support to the county civil rights commission;

5. Serving as the county federal Civil Rights Act Title VI coordinator; and

6. Coordinating county responses to federal Civil Rights Act Title VI issues and investigating complaints filed under Title VI.

I. The duties of the ((~~administrative~~)) office of information resource management shall include the ((~~following:~~)) duties in K.C.C. 2.16.0755.

((~~1. Identifying and establishing short-range, mid-range and long-range objectives for information technology investments in the county;~~

~~2. Preparing and recommending for council approval a county information technology strategic plan and annually updating the plan;~~

~~3. Recommending business and technical information technology projects for funding as part of the county's strategic planning process;~~

~~4. Recommending technical standards for the purchase, implementation and operation of computing hardware, software and networks as part of the county's strategic planning process;~~

~~5. Recommending countywide policies and standards for privacy, security and protection of data integrity in technology infrastructure, electronic commerce and technology vendor relationships as part of the county's strategic planning process;~~

~~6. Recommending information technology service delivery models for the information and telecommunications services division and the county's satellite information technology centers;~~

~~7. Establishing a standard process for information technology project management, including requirements for project initiation and review, parameters for agency contracts with information technology vendors, and reporting requirements to facilitate monitoring of project implementation;~~

~~8. Establishing criteria for determining which information technology projects will be monitored centrally;~~

~~9. Monitoring project implementation when projects meet the established criteria;~~

~~10. Releasing the funding for each phase of those projects subject to central oversight based on successful reporting and completion of milestones;~~

~~11. Recommending budgetary changes in the funding of information technology projects to the executive and council, as appropriate;~~

~~12. Recommending project termination, as appropriate;~~

~~13. Conducting post-implementation information technology project review;~~ ~~and~~

~~14. Reporting annually on information technology performance to the executive and the council.~~))

SECTION 3. Ordinance 11955, Section 5, as amended, and K.C.C. 2.16.055 are each hereby amended to read as follows:

Department of development and environmental services - duties - divisions.

A. The department of development and environmental services is responsible to manage and be fiscally accountable for the building services division, land use services division, and administrative services division. The director of the department shall be the county planning director, building official, fire marshal((,)) and zoning adjuster((,)) and the responsible official for purposes of administering the ((S))state Environmental Policy Act, and may delegate those functions to qualified subordinates. The department shall be responsible for regulating the operation, maintenance and conduct of county-licensed businesses, except taxicab and for-hire drivers and vehicles. The department shall be responsible for managing and coordinating the implementation of Growth Management Act requirements, coordinating county and regional land use planning with public and private agencies, developing proposed policies to address regional land use planning and developing and overseeing the countywide program for implementation of the county's Comprehensive Plan including coordinating the implementation of plans that are developed by departments.

B. The building services division shall be responsible for ensuring consistent and efficient administration of environmental, building and land use codes and regulations for commercial and residential projects by means of permit review and approval, construction inspections and public information. The duties of the division shall include the following:

1. Permit center and public information;

2. Building plan and application review, including fire, fire-flow, building, mechanical, barrier-free, energy, security and other uniform code reviews;

3. Site review, including engineering and sensitive areas review of permit applications;

4. Inspections, including new-construction inspections for compliance with site, fire and building code requirements; and

5. Pursue and resolve code violations, including preparing for administrative or legal actions, evaluating the division's success in obtaining compliance with King County rules and regulations and designing measures to improve compliance.

C. The land use services division shall be responsible for the effective processing and timely review of land development proposals, including zoning variance and reclassification, master drainage plans, variances from the surface water design manual and the King County road standards, sensitive area, subdivision, right-of-way use, urban planned development, clearing and grading, shoreline, special use and conditional use applications. The duties of the division shall include the following:

1. Permit center and public information;

2. Plan review, including the review of applications for compliance with shorelines, sensitive areas, subdivision and other zoning regulations, road standards and variances from the surface water design manual, as well as community plans and utility comprehensive plans;

3. Engineering review and inspection, including the review of clearing and grading applications and review of engineering plans for compliance with adopted road and drainage standards and specifications;

4. Development inspection, including inspection of construction activity to ensure compliance with approved plans and codes;

5. Develop and assist in implementing local and subarea specific plans for urban and rural areas, consistent with the ((~~c~~))Comprehensive ((~~p~~))Plan;

6. Develop proposed policies to address long-range comprehensive land use planning and analyze and provide proposed updates to the ((~~c~~))Comprehensive ((~~p~~))Plan on an annual basis;

7. Develop proposed county plans, programs and policies and implement regulations on environmental issues, including environmentally sensitive areas and mineral resources((~~;~~)), and serve as the contact for cities and agencies, providing appropriate research in support of county initiatives on these issues;

8. Administer the ((~~S~~))state Environmental Policy Act and act as lead agency, including making the threshold determinations, determining the amount of environmental impact and reasonable mitigation measures((~~,~~)) and coordinating with other departments and divisions in the preparation of county environmental documents or in response to environmental documents from other agencies; and

9. Monitor the cumulative effects of the county's ((e))Comprehensive ((p))Plan and other plans, policies and laws intended to protect natural and community resources while permitting development and growth, and providing periodic status reports to the executive and council.

D. The administrative services division shall provide support services throughout the department, including personnel and payroll support, budget support, financial services, information services, facilities management and support((,)) and records management and program analysis services.

SECTION 4. Ordinance 14005, Section 3, as amended, and K.C.C. 2.16.0755 are each hereby amended to read as follows:

Office of information resource management – chief information officer.

A. The office of information resource management shall be directed by a chief information officer (CIO). The CIO shall be appointed by the executive and confirmed by the council. The CIO shall report to the county executive and advise all branches of county government on technology issues. ((~~The CIO shall report to the county administrative officer on administrative and management matters.~~)) The CIO shall provide vision and coordination in technology management and investment across the county. The CIO shall attend regular((~~ly~~)) executive cabinet meetings as a non-voting member and advisor on technology implications of policy decisions. The CIO shall meet regularly with business managers for the assessor, council, prosecutor, superior court, district court and sheriff to advise on technology implications of policy decisions. The CIO shall advise all county elected officials, departments and divisions on technology planning and project implementation.

B. The duties of the CIO also shall include the following:

((~~A.~~)) 1. Overseeing the information technology strategic planning office and production of a county information technology strategic plan and annually updating the plan;

((~~B.~~)) 2. Overseeing the central information technology project management office and monitoring of approved technology projects;

((~~C.~~)) 3. Recommending business and technical information technology projects for funding as part of the county's strategic planning process;

((~~D.~~)) 4. Recommending technical standards for the purchase, implementation and operation of computer hardware, software and networks as part of the county's strategic planning process;

((~~E.~~)) 5. Recommending countywide policies and standards for privacy, security and protection of data integrity in technology infrastructure, electronic commerce and technology vendor relationships as part of the county's strategic planning process;

((~~F.~~)) 6. Recommending information technology service delivery models for the information and telecommunications services division and the county's satellite information technology centers;

7. Identifying and establishing short-range, mid-range and long-range objectives for information technology investments in the county;

8. Establishing a standard process for information technology project management, including requirements for project initiation and review, parameters for agency contracts with information technology vendors, and reporting requirements to facilitate monitoring of project implementation;

9. Establishing criteria for determining which information technology projects will be monitored centrally;

10. Monitoring project implementation when projects meet the established criteria;

11. Releasing the funding for each phase of those projects subject to central oversight based on successful reporting and completion of milestones;

12. Recommending budgetary changes in the funding of information technology projects to the executive and council, as appropriate;

13. Recommending project termination, as appropriate;

14. Conducting post-implementation information technology project review;

((~~G.~~)) 15. Managing the internal service fund of the office of information resource management; and

((~~H.~~)) 16. Providing annual performance review to the executive and council.

SECTION 5. Ordinance 14155, Section 5, and K.C.C. 2.16.07585 are each hereby amended to read as follows:

Project review board.

A. The project review board is hereby created. The board shall act in an advisory capacity to the county's chief information officer in implementing the project management guidelines developed by the central information technology project management office as described in K.C.C. 2.16.0758 A through E. As appropriate, the board also may assume the project oversight role assigned to the project management office under K.C.C. 2.16.0758 F through K. The members shall be: the ((~~King County~~)) chief information officer, the assistant ((~~deputy~~)) county executive operations I, the

((~~budget~~)) director of the office of management and budget and the director of the department of ((~~information and administrative~~)) executive services.

B. The King County chief information officer shall serve as the chair of the project review board.

C. Ad hoc project review teams may be convened as determined to be necessary by the project review board to focus on specific projects. Each ad hoc project review team will include the project's sponsoring agency director. These teams shall report back findings to the board.

D. Formal votes shall be taken and recorded on all recommendations and endorsements.

((~~E. Members of the project review board shall serve without compensation.~~))

SECTION 6. Ordinance 12529, Section 2, as amended, and K.C.C. 2.16.080 are each hereby amended to read as follows:

Seattle-King County department of public health.

A. ((~~Department established.~~)) Since 1951, the city of Seattle and the county have jointly financed and operated a city-county health department. As of January 1, 1981, the city of Seattle and the county established a combined city-county health department known as the Seattle-King County department of public health under chapters 70.05 and 70.08 RCW and certain city ordinances and county resolutions and ordinances. The director of the department shall be jointly appointed by the mayor of the city and the county executive, subject to confirmation by the city and county councils, and may be removed by the county executive, after consultation with the mayor, upon filing a

statement of the reasons therefor with the city and county councils as authorized by RCW 70.08.040. The director shall be responsible for the management of the department.

B. ((~~Responsibilities of the department.~~)) As provided in the agreement between King County and the city of Seattle entitled "1996 Agreement Regarding the Seattle-King County Department of Public Health" approved by the county council by Motion 9999, the department shall be responsible for providing a functionally integrated set of services and programs that are fully responsive to urban, suburban city and ((~~nonincorporated~~)) unincorporated communities. The department shall achieve and sustain healthy people and healthy communities throughout King County by providing public health services ((~~which~~)) that promote health and prevent disease, including, but not limited to: providing needed or mandated prevention or intervention services to address individual and community health concerns; assessing and monitoring the health status of communities; preventing disease, injury, disability and premature death; promoting healthy living conditions and healthy behaviors; and controlling and reducing the exposure of individuals and communities to environmental or personal hazards. The department shall assess the health of King County residents and communities, facilitate planning to develop responses to issues which affect the public's health((~~,~~)) and evaluate the effectiveness of programs and initiatives which address these issues. The department shall include an emergency medical services division, an environmental health division, a prevention division, a community oriented primary care division, an alcohol, tobacco and other drug abuse prevention division, an administrative services division and regional services areas. The department shall manage children and family programs and shall provide administrative support to the children and family commission.

C. ((~~Emergency medical services division.~~)) To fulfill the purpose of reducing death and disability from accidents, acute illness, injuries and other medical emergencies, the duties of the emergency medical services division shall include the following:

1. Track and analyze service and program needs of the emergency medical services system in the county, and plan and implement emergency medical programs, services and delivery systems based on uniform data and standard emergency medical incident reporting;

2. Set standards for emergency medical services training and implement emergency medical service personnel training programs, including, but not limited to, public education, communication and response capabilities and transportation of the sick and injured;

3. Coordinate all aspects of emergency medical services in the county with local, state and federal governments((,)) and other counties, municipalities and special districts for the purpose of improving the quality and quantity of emergency medical services and disaster response in King County; and

4. Analyze and coordinate the disaster response capabilities of the department.

D. ((~~Environmental health division~~)). The duties of the environmental health division shall include the following:

1. Inspect and monitor regulated facilities to ensure compliance with public health codes, rules and regulations;

2. Investigate complaints or special programs, such as disease outbreaks, sewage spills or toxic spills, identified by the public, the media or public officials;

3. Advise or educate the public on health risks associated with environmental hazards; and

4. Enforce public health codes, rules and regulations within the jurisdictions of the division.

E. ((~~Prevention division.~~)) The duties of the prevention division shall include the following:

1. Reduce the public's exposure to communicable diseases through surveillance and outbreak investigation;

2. Lower the occurrence of chronic diseases, injury and violence in the community through strategies which reduce the frequency of risk factors for these conditions;

3. Promote and provide public education and research in the development of prevention models;

4. Perform specific public health services including vital statistics and laboratory functions; and

5. Perform medical examiner and statutory coroner duties, except for the holding of inquests, which function is vested in the county executive.

F. ((~~Community oriented primary care division.~~)) The community oriented primary care division shall focus the department's clinical leadership, health services and expertise and strengthens quality systems and effective care partnerships with government, business and community-based organizations. To maintain the community health care system, the duties of the division shall include the following:

1. Develop benchmarks of service quality, clinical guidelines and standards of excellence for the health department;

2. Provide leadership and coordination with health care providers, government agencies, ((~~business~~)) businesses and community groups in the provision of primary health services to at-risk populations in King County;

3. Develop, implement and monitor a systematic, comprehensive system of health service delivery in King County ((~~which~~)) that improves health outcomes by connecting community-based intervention and strategies with the health care of individuals;

4. Develop responsive service delivery and access mechanisms to meet the changing health care needs of at-risk populations in King County; and

5. Provide basic primary care services to detainees of the King County adult detention facilities.

G. ((~~Alcohol, tobacco and other drug abuse prevention division.~~)) The duties of the alcohol, tobacco and other drug abuse prevention division shall include the following:

1. Administer, staff and provide technical expertise to department programs related to the prevention of alcoholism and substance abuse;

2. Provide prevention services on alcoholism and other drug addictions under federal and state laws and King County ordinances;((~~and~~))

3. Link and integrate alcohol, tobacco and other drug abuse interventions with public health functions and activities; and

4. Provide for the delivery of alcohol, tobacco and other drug abuse services in correctional facilities.

H. ((~~Administrative services division.~~)) The duties of the administrative services division shall include the following:

1. Provide administrative and technical support to the department;

2. Oversee the administrative systems and activities of the department; and

3. Provide general support within the department as authorized elsewhere in this chapter.

I. ((~~Regional service areas.~~)) In addition to divisions, the department shall be organized into regional service areas that will directly provide department activities, services and programs within identified geographic boundaries in the county.

SECTION 7. Ordinance 11955, Section 13, as amended, and K.C.C. 2.16.110 are each hereby amended to read as follows:

Appointment and confirmation of exempt officials.

A. The county executive shall appoint the county administrative officer and the director of each executive department, except the departments of assessment, public safety and judicial administration. The county executive shall also appoint the ((~~manager~~))division director of the youth detention facility through a competitive search process that includes participation by the superior court judges.

B. The county administrative officer shall appoint the division ((~~managers~~))directors and chief officers of each administrative office in the department of executive services((~~, except the chief information officer~~)).

C. The director of each executive department, at the discretion of the county executive, shall appoint exempt employees of his or her department as provided in Section 550 of the King County Charter.

D.1. All appointments by the county executive shall be subject to confirmation by a majority of the county council except exempt personnel assigned to his or her personal staff.

2. All appointments to positions of division ((~~manager~~))director or chief officer of an administrative office not made by the county executive shall be subject to approval by the county executive.

E.1. All individuals appointed by the county executive, under Section 340.40 of the King County Charter, shall serve in an acting capacity, unless confirmed by the council. The executive is authorized to appoint a person to serve in an acting capacity to fill a position requiring council confirmation for a period of no greater than one hundred fifty days. The executive shall notify the council within ninety days concerning the status of his or her search for qualified candidates for appointment to the vacant position. Thereafter, the individual may continue serving in an acting capacity for successive sixty-day periods only with approval by motion of the county council. The council shall grant at least one successive sixty-day extension if the executive certifies to the council's satisfaction that the executive is actively pursuing a search for qualified candidates for appointment to the vacant position. If no appointment is transmitted to the council for confirmation during the authorized period, the position shall be considered vacant for purposes of exercise of any authority given to the position ((~~pursuant to~~)) under ordinance and no salary shall be paid for the position while it is so vacant.

2. Within seven calendar days of any executive appointment that is subject to council confirmation, the executive shall deliver written notice of said appointment to the council accompanied by a proposed motion confirming the appointment.

3. Upon the receipt of the notification by the executive of an appointment, accompanied by the proposed motion, the council shall act to consider confirmation of the appointment within ninety days. Approval of the introduced motion by a majority of the council shall constitute confirmation of the appointee. Once confirmed, the appointee is no longer serving in an acting capacity.

4. In considering the confirmation of executive appointments to offices of management level responsibility, the council shall base its review on the ability of the appointee to meet the following criteria:

a. a demonstrated reputation for integrity and professionalism;

b. a commitment to and knowledge of the responsibilities of the office;

c. a history of demonstrated leadership, experience and administrative ability;

d. the ability to work effectively with the executive, the council, other management, public agencies, private organizations and citizens; and

e. a demonstrated sensitivity to and knowledge of the particular needs and problems of minorities and women.

5. The appointee, ((~~prior to~~)) before review of the appointment by the council, shall submit to the chair of the council:

a. a full and complete resume of his or her employment history, to include references attesting to the stated employment experiences; and

b. a signed statement acknowledging that the council's confirmation process may require the submittal of additional information relating to the background and expertise of the appointee.

6. Upon receipt of an executive appointment, the chair or his or her delegate, subject to the council's rules of procedure, shall notify council members of the appointment and attempt to allow a minimum of one work week for individual members to submit written questions to the reviewing committee.

It is understood that written inquiries submitted to the reviewing committee, by individual council members, may require a written response from the appointee or the executive, in matters pertaining to the process of appointment and other pertinent employment policies of King County.

SECTION 8. Ordinance 12432, Section 2, as amended, and K.C.C. 2.16.120 are each hereby amended to read as follows:

Department of adult and juvenile detention -- duties -- divisions.

A.1. The department of adult and juvenile detention is responsible to manage and be fiscally accountable for the Seattle division, ((~~and~~)) the Kent division, ((~~and~~)) the juvenile division, the community corrections division and the administrative services division, ((~~all three~~)) each of which shall have equal standing within the department. Through the Seattle division and the Kent division, the department shall operate the King County adult correctional facility and the security operation of the work and education release unit in Seattle and the Regional Justice Center adult correctional facility in Kent. Through the juvenile division, the department shall operate the county's juvenile detention facility. ((~~In addition,~~)) Through the community corrections division, the department ((~~is responsible for~~)) shall administer programs that provide alternatives to confinement in the adult correctional facilities, as well as services and support functions directed toward reduction of the adult correctional facilities' populations. Through the

administrative services division, the department shall administer personnel operation, budget and fiscal operations and other central support services for the department. In addition, the administrative services division shall be responsible for the administration and monitoring of jail health expenditures and services through a jail health levels of service agreement and contract with its health services contractor. The division shall monitor the provision of health care services and is responsible for ensuring that minimum inmate health care needs are met and monitoring the cost-containment provisions for both operational and health care related costs.

2. The judges of the superior court have final authority for approval of all screening criteria ((~~including participation in any~~)) for admission to the juvenile detention facility and alternatives to confinement ((~~for~~)) in the juvenile detention facility. The department shall implement such criteria approved by the superior court related to the juvenile detention facility. The department shall implement the criteria approved by the superior and district courts related to adult detention facilities and alternatives to confinement.

B. The duties of the Seattle division and the Kent division shall include the following:

1. House adult persons who are any combination of arrested for, charged for or held on investigation of a criminal offense;

2. House adult persons during trial, and before sentencing after conviction;

3. House adult persons serving sentences not exceeding one year;

4. Maintain records and process and identify property of persons confined or committed to correctional facilities operated by the division;

5. Perform functions related to residential and building security, including supervision of persons confined or committed to correctional facilities operated by the division;

6. Transport confined or committed adult persons to and from court and provide secure escort of those persons outside the facilities;

7. Provide nutritional meals daily to confined or committed adult persons, including preparation of special meals in response to medical and religious requirements;

8. Provide health care to confined or committed adult persons in conjunction with the Seattle-King County department of public health ((~~department~~)), including medical, dental and psychiatric care;

9. Provide social services to and for confined or committed adult persons, including, but not limited to, the following: classifying those persons; evaluating mentally ill or developmentally disabled confined or committed persons, including referral to available community programs; reviewing those persons with psychiatric problems; reviewing other special population groups; providing general population group management; and providing outside agency access to those persons including special visitation, library, recreational and educational services; and

10. Ensure compliance with laws and regulations applicable to the management and operation of the correctional facilities.

C. The principle function of the juvenile division is to operate the county's juvenile detention facility in a safe, secure and humane manner as prescribed by state law and court rules. The juvenile division shall administer alternatives to secure detention as approved by the court, a school program, a health program and other related programs.

The juvenile division shall be operated in a manner ((~~which~~)) that will give reasonable access to the defense bar, juvenile probation counselors and social service providers and educators, consistent with appropriate security measures and public safety.

D. ((~~All~~)) The duties of the administrative services division shall include administering personnel operations, budget and fiscal operations and other central support services involving ((~~staff members of the Seattle, Kent and juvenile~~)) all divisions ((~~shall be administered within a division of administrative services~~)) in the department to ensure consistency and efficiency of operations. The department's ((~~chief of administration~~))director the administrative services division shall oversee these operations and services, and the operations and services shall conform to county policies and procedures and to department guidelines and practices.

NEW SECTION. SECTION 9. There is hereby added to K.C.C. chapter 2.16 a new section to read as follows:

Community corrections division.

A. The community corrections division is established as a subordinate administrative office under King County Charter Section 350.10. The division manager shall be subject to the provisions of King County Charter Section 340, requiring that the appointed division manager be subject to council confirmation. The department shall provide administration, analytic, and other support to the division.

B. The duties of the community corrections division shall include:

1. Based on screening criteria approved by the superior and district courts, implementation of alternatives to adult detention, including, but not limited to, electronic home detention, work and education release, day and evening reporting and work crews;

2. Assessment of the needs of adult persons placed in alternatives to detention; and

3. Contracting with private nonprofit community agencies to provide services for relicensing offenders.

SECTION 10. Ordinance 13720, Section 4, and K.C.C. 2.45.030 are each hereby amended to read as follows:

Membership – terms and nonvoting ex officio members.

A. The commission must consist of nineteen voting members and shall consist of one member nominated by each councilmember. Councilmembers must provide the executive with a recommendation to represent their council district. If the executive does not appoint a person that has been recommended by the councilmember, the executive must request that the councilmember nominate another candidate for appointment. Six members of the commission shall be appointed by the executive.

B. In making appointments to the commission, an effort should be made to assure that the following categories of recreation are considered: field sports, court sports, aquatic recreation, hobby groups, specialized recreation for persons with disabilities and any other sport which requires facilities or fields. Additionally, one or more representatives of local youth groups should be included on the commission membership. Councilmembers may recommend candidates for appointment who are under the age of eighteen. Commission membership shall be monitored by the director of the department of natural resources and parks ((~~and recreation~~)) and the director shall provide councilmembers with recommendations on which recreation categories are not represented on the commission and which categories should receive priority

consideration for appointment. The director((s)) of the King County department of natural resources and parks ((~~and recreation, and the office of regional policy and planning~~)), a representative from a local law enforcement agency, and a representative of King County council's natural resources, parks and open space committee may serve as nonvoting ex officio members of the commission.

C. All appointees should have a working knowledge of parks and recreation, a strong commitment to promote recreation in King County, the ability to work with differing viewpoints to find solutions to complex problems and a willingness to commit the time necessary to attend commission meetings and activities.

SECTION 11. Ordinance 12075, Section 13, as amended, and K.C.C. 2.50.045 are each hereby amended to read as follows:

Staffing. The ((~~office of regional planning and policy~~)) Seattle-King County department of public health shall have lead responsibility, within available resources, for staffing the commission. Staff ((~~for the office will~~)) from the department shall respond to the chair of the commission, assisting in the preparation of agendas, securing information and statistics as requested or required for commission projects, keeping members informed about meetings and tasks, communicating with the executive office about appointments of new members as needed and working with the commission to ((~~insure~~)) ensure the intent of this chapter is fulfilled.

SECTION 12. Ordinance 12076, Section 2, as amended, and K.C.C. 4.04.020 are each hereby amended to read as follows:

Definitions. The following terms as used in this chapter shall, unless the context clearly indicates otherwise, have the respective meanings in this section.

A. "Acquisition of right of way" or "land acquisition" means funds budgeted for the purchase of property rights, excluding county force charges of the real property division.

B. "Adopted" means approval by council motion or ordinance.

C. "Agency" means every county office, officer, each institution, whether educational, correctional or other, and every department, division, board and commission, except as otherwise provided in this chapter.

D. "Allocation" means a part of a lump sum appropriation that is designated for expenditure by specific organization unit and/or specific purposes.

E. "Allotment" means a part of an appropriation that may be encumbered or expended during an allotment period.

F. "Allotment period" means a period of less than a fiscal year during which an allotment is effective.

G. "Appropriations" means an authorization granted by the council to make expenditures and to incur obligations for specific purposes.

H. "Appropriation ordinance" means the ordinance that establishes the legal level of appropriation for a fiscal year.

I. "Art" means funds budgeted for the one percent for art program under K.C.C. chapter 4.40 or as otherwise provided by ordinance for a public art program.

J. "Budget" means a proposed plan of expenditures for a given period or purpose and the proposed means for financing these expenditures.

K. "Budget document" means a formal, written, comprehensive financial program presented by the executive to the council.

L. "Capital improvement plan" means a plan that establishes the capital improvements required to implement an approved operational master plan. This plan should extend over a minimum period of six years to define long-range capital improvement requirements and the annual capital improvements budget for a user agency.

1. The capital improvement plan shall include the following elements, where applicable:

a. general program requirements that define the development scope for specific sites or facilities;

b. general space and construction standards;

c. prototype floor plans and prototype facility designs for standard improvements;

d. space requirements based on the adopted county space plan;

e. initial, and life-cycle cost, of alternative facilities and locations including lease and lease/purchase approaches;

f. approximate location of planned capital improvements;

g. general scope and estimated cost of infrastructure;

h. a schedule, that extends over a minimum of six years, for the implementation of projects included in capital improvement plans, based on overall user agency priorities and projected available revenue;

2. The user agency shall prepare the elements of the plan in subsection L.1. a, d, f and h of this section. The implementing agency shall prepare the elements of this plan in subsection L.1. b, c, e and g of this section.

3. The six-year budget schedule included in the capital improvement plan shall be updated annually in conjunction with the capital budget adoption process.

M. "Capital project" means a project with a scope that includes one or more of the following elements, all related to a capital asset: acquisition of either a site or existing structure, or both; program or site master planning; design and environmental analysis; construction; major equipment acquisition; reconstruction; demolition; or major alteration. "Capital project" includes a: project program plan; scope; budget by task; and schedule. The project budget, conceptual design, detailed design, environmental studies and construction elements of a project shall be prepared or managed by the implementing agency.

N. ((~~"Chief budget and strategic planning officer" means the individual designated by the executive to perform the budgeting and strategic planning functions assigned to the executive under K.C.C. chapter 2.16.~~

~~O.~~)) "CIP" means capital improvement program.

((~~P.~~)) O. "CIP exceptions notification" means, except in the case of roads, wastewater and surface water management CIP projects, a letter transmitted to the chair of the council finance committee, or its successor committee, which describes changes to an adopted CIP project's scope and/or schedule or total project cost and, with the exception of schedule changes, shall be sent in advance of any action. For road CIP projects, "exceptions notification" means a letter transmitted to the chair of the transportation committee, or its successor committee, which describes changes of fifteen percent or more to an adopted CIP project's scope and/or schedule or total project costs and, with the exception of schedule changes, shall be sent in advance of any action. For wastewater

and surface water management CIP projects, "exceptions notification" means a letter transmitted to the chair of the budget and fiscal management committee, or its successor committee, and the chair of the utilities committee, or its successor committee, which describes changes of fifteen percent or more to an adopted CIP project's scope and/or schedule or total project costs and, with the exception of schedule changes, shall be sent in advance of any action.

((~~Q.~~)) P. "Construction" means funds budgeted for CIP project construction including contract construction, contract inspection and testing and, as appropriate, construction tasks performed by county forces.

((~~R.~~)) Q. "Contingency" means funds budgeted for unanticipated CIP project costs associated with any other project activities.

((~~S.~~)) R. "Contracted design" or "preliminary engineering" means funds budgeted for activities of a contract nature associated with all CIP project phases through bid advertising. Included are contracts for feasibility studies, planning, studies, preliminary design, construction drawings, bid specifications and on-site inspections.

((~~T.~~)) S. "Cost elements" means CIP budgeting activities related to construction, contracted design, preliminary engineering, acquisition of right of way, equipment and furnishings, contingency, artistic furnishings, county force design, county force right of way, project administration or other activities as provided by the council.

((~~U.~~)) T. "Council" means the county council of King County.

((~~V.~~)) U. "County force design" means funds budgeted for CIP project design or design review by county personnel.

((~~W.~~)) V. "County force right of way" means funds budgeted for real property costs associated with CIP land acquisition.

((~~X.~~)) W. "Deficit" means the excess of expenditures over revenues during an accounting period, or an accumulation of such excesses over a period of years.

X. "Director" means the director of the office of management and budget.

Y. "Equipment and furnishings" means all costs for the purchase of equipment and furnishings associated with CIP project construction.

Z. "Executive" means the King County executive, as defined by Article 3 of the King County Charter.

AA. "Expenditures" means, where the accounts are kept on the accrual basis or the modified accrual basis, the cost of goods delivered or services rendered, whether paid or unpaid, including expenses, provisions for debt retirement not reported as a liability of the fund from which retired, and capital outlays. Where the accounts are kept on the cash basis, "expenditures" means actual cash disbursements for these purposes.

BB. "Financial plan" means a summary by fund of planned revenues and expenditures, reserves and undesignated fund balance.

CC. "Fund" an independent fiscal and accounting entity with a self balancing set of accounts recording cash and/or other resources together with related liabilities, obligations, reserves and equities which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

DD. "Fund balance" means the excess of the assets of a fund over its liabilities and reserves except in the case of funds subject to budgetary accounting where, before the end

of a fiscal period, it represents the excess of the fund assets and estimated revenues for the period over its liabilities, reserves and appropriations for the period.

EE. "Implementing agency" means the appropriate department and division responsible for the administration of CIP projects.

FF. "Lapse" of an appropriation means an automatic termination of an appropriation.

GG. "Major widening project" means any roads CIP project adding at least one through land in each direction.

HH. "Object of expenditure" means a grouping of expenditures on the basis of goods and services purchased (e.g., salary and wages).

II. "Open space non-bond fund project: means an open space project that is allocated in the adopted six-year open space CIP and is appropriated at the open space non-bond fund number 3522 level in accordance with K.C.C. 4.04.300.

JJ. "Operational master plan" means a comprehensive plan for an agency setting forth how the organization will operate now and in the future. It shall include the analysis of alternatives and their life cycle costs to accomplish defined goals and objectives, performance measures, projected workload, needed resources, implementation schedules and general cost estimates. This plan shall also address how the organization would respond in the future to changed conditions.

KK. "Program" means the definition of resources and efforts committed to satisfying a public need. The extent to which the public need is satisfied is measured by the effectiveness of the process in fulfilling the needs as expressed in explicit objectives.

LL. "Project administration" means funds budgeted for all county costs associated with administering design and construction contracts on CIP projects.

MM. "Project program plan" means a plan, primarily in written narrative form, that describes the overall development concept and scope of work for a building, group of buildings or other facilities at a particular site. The complexity of the project program plan will vary based upon the size and difficulty of the program for a particular site. When the plan includes projects that are phased over time, each phase shall have an updated project program plan prepared by the user agency before project implementation. The project program plan shall be prepared by the user agency with assistance from the implementing agency. The program plan: describes the user agency program requirements for a specific building or site; provides the basis for these requirements; and identifies when funds for the implementation of the capital projects will be provided. The program plan shall elaborate on the general program information provided in the operational master plan and the capital improvement plan. The plan shall also describe user agency programs, how these programs would fit and function on the site, and the general recommendation of the user agency regarding the appearance of the building or site. This plan shall indicate when a site master plan is required for a project.

NN. "Public need" means those public services found to be required to maintain the health, safety, and well being of the general citizenry.

OO. "Quarterly management and budget report" means a report prepared quarterly by the ((~~chief budget and strategic planning officer~~)) director for major operating and capital funds, which:

1. ((~~p~~))Presents executive revisions to the adopted financial plan or plans ((~~and~~));

2. ((i))Identifies significant deviations in agency workload from approved levels ((and));

3. ((i))Identifies potential future supplemental appropriations with a brief discussion of the rationale for each potential supplemental;

4. Identifies significant variances in revenue estimates;

5. Reports information for each appropriation unit on the number of filled and vacant full-time equivalent and term-limited temporary positions and the number of temporary employees;

6. Includes the budget allotment plan information required under K.C.C. 4.04.060; and

7. Describes progress towards transitioning potential annexation areas to cities.

PP. "Reappropriation" means authorization granted by the council to expend the appropriation for the previous fiscal year for capital programs only.

QQ. "Regulations" means the polities, standards and requirements, stated in writing, designed to carry out the purposes of this chapter, as issued by the executive and having the force and effect of law.

RR. "Revenue" means the addition to assets which does not increase any liability, nor represent the recovery of an expenditure, nor the cancellation of certain liabilities on a decrease in assets nor a contribution to fund capital in enterprise and intragovernmental service funds.

SS. "Roads CIP project" means roads capital projects that are allocated in the adopted six-year roads CIP and are appropriated at the roads CIP fund level in accordance with K.C.C. 4.04.270.

TT. "Scope change" means, except in the case of roads, surface water management and wastewater CIP projects, a CIP project's scope is changed if total project cost increases by ten percent or by fifty thousand dollars, whichever is less. A roads, surface water management or wastewater CIP project's scope is changed if the total project cost increases by fifteen percent.

UU. "Site master plan" means a plan prepared by the implementing agency, with input from the user agency, that describes, illustrates and defines the capital improvements required to provide user agency program elements.

1. The site master plan shall include preliminary information regarding, at a minimum:

a. site analysis, including environmental constraints;

b. layout, illustration and description of all capital improvements;

c. project scopes and budgets;

d. project phasing; and

e. operating and maintenance requirements.

2. The site master plan shall be approved by the user agency and the implementing agency before submittal to the executive and council for approval.

VV. "Surface water management CIP project" means a surface water management project that is allocated in the adopted six-year surface water management CIP and is appropriated at the surface water management CIP fund level in accordance with K.C.C. 4.04.275.

WW. "User agency" means the appropriate department, division, office or section to be served by any proposed CIP project.

XX. "Wastewater asset management projects" means the wastewater capital projects identified and intended by the wastewater treatment division to extend and optimize the useful life of wastewater treatment assets, including facilities, structures, pipelines and equipment.

YY. "Wastewater CIP project" means wastewater capital projects that are allocated in the adopted six-year wastewater CIP and are appropriated at the wastewater CIP fund level in accordance with K.C.C. 4.04.280.

SECTION 13. Ordinance 12076, Section 3, as amended, and K.C.C. 4.04.030 are each hereby amended to read as follows:

Contents of the budget document. The budget documents shall include, but not be limited to, data specified in this chapter.

A. The budget shall set forth the complete financial plan for the ensuing fiscal year showing planned expenditures, and the sources of revenue from which they are to be financed.

1. The budget document shall include the following:

a. estimated revenue by fund and by source from taxation;

b. estimated revenues by fund and by source other than taxation;

c. actual receipts for first six months (January 1 through June 30) of the current fiscal year;

d. actual receipts for the last completed fiscal year by fund and by source;

e. estimated fund balance or deficit for current fiscal year by fund; and

f. such additional information dealing with revenues as the executive and council shall deem pertinent and useful.

2. The budget document shall include the following:

a. tabulation of expenditures in a comparable form by fund, program project, and/or object of expenditure for the ensuing fiscal year;

b. actual expenditures for the first six months (January 1 through June 30) of the current year;

c. actual expenditures for the last completed fiscal year;

d. the appropriation for the current year; and

e. such additional information dealing with expenditures as the executive and council shall deem pertinent and useful.

3. All capital improvement projects and appropriations shall be authorized only by inclusion in the annual council adopted CIP or any amendment thereto. A bond ordinance is not an appropriation for capital projects. The capital improvement section of the budget shall include:

a. estimated expenditures for at least the next six fiscal years by program;

b. expenditures planned for current, pending, or proposed capital projects during the fiscal year, classified according to proposed source of funds whether from bonds, or any combination of other local, state, federal and private sources;

c. an alphabetic index to enable quick location of any project contained in the budget;

d. a discrete number for each project which shall serve to identify it within the capital budget document, and all accounting reports;

e. estimated net annual operating costs associated with each project upon completion or in cases where operating costs are negligible or incalculable, a statement to that effect;

f. an identification of all CIP projects by council district in which they are located;

g. CIP projects funded in the budget year shall be presented in a separate section of the budget, or otherwise distinctively identified from five year CIP program of future planned projects and any previously funded projects. However:

(1) roads CIP projects shall be presented in the six-year road CIP program;

(2) the appropriation for roads projects shall be made at the roads CIP fund level in accordance with K.C.C. 4.04.270;

(3) wastewater CIP projects shall be presented in the six-year wastewater CIP program;

(4) the appropriation for wastewater CIP projects shall be made at the wastewater CIP fund level in accordance with K.C.C. 4.04.280;

(5) surface water management CIP project shall be presented in the six-year surface water management CIP program; and

(6) the appropriation for surface water management CIP projects shall be made at the surface water management CIP fund level in accordance with K.C.C. 4.04.275;

h. in addition to schedule requirements, a statement of purpose and estimated total cost for each project for which expenditures are planned during the ensuing fiscal year;

i. the original project cost estimate which shall remain fixed from year to year. This original cost estimate shall be included in the capital budget document. A project record, separate from the budget document, shall be provided which identifies the original project cost estimate and any subsequent changes thereto by cost element and revenue source as approved in the budget document or any amendment to the budget;

j. an enumeration of revised project cost estimates;

k. funds actually expended for projects as of June 30 of the current year;

l. funds previously authorized for the project;

m. anticipated specific cost elements within each project. However, the executive is authorized to transfer funds between specific activities within the same project provided that, these transfers will not result in a necessary increase to the total project budget. A change in scope of a project constitutes a revision. A CIP project scope change shall be included in the CIP exceptions notification if total project costs increase by ten percent or by fifty thousand dollars, whichever is less; or if the schedule deviates by three months. For parks CIP projects, a CIP exceptions notification shall be transmitted in advance to the chair of the council finance committee, or its successor committee, when fifty thousand dollars or more or funds in excess of ten percent or more of total project costs, whichever is less, are to be transferred from a contingency project to a CIP project. For roads CIP projects, a CIP exceptions notification shall be transmitted in advance to the council transportation chair when contingency funds in excess of fifteen percent or more of total project costs are to be transferred. For wastewater and surface water management CIP projects, a CIP exceptions notification shall be transmitted in advance to the chair of the budget and fiscal management

committee, or its successor committee, and chair of the utilities committee, or its successor committee, when contingency funds in excess of fifteen percent or more of total project costs are to be transferred;

n. individual allocations by cost element for each capital project; and

o. when a single fund finances both operating expenses and capital projects, there shall be separate appropriations therefrom for the operating and the capital sections of the budget.

B.1. The budget message shall explain the budget in fiscal terms and in terms of goals to be accomplished and shall relate the requested appropriation to the Comprehensive Plan of the county.

2. The total proposed expenditures shall not be greater than the total proposed revenue. However, this requirement shall not prevent the liquidation of any deficit existing on January 1, 1996.

3. If the estimated revenues in the current expense, special revenue, or debt service funds for the next ensuing fiscal period, together with the fund balance for the current fiscal period exceeds the applicable appropriations proposed by the executive for the next ensuing fiscal period, the executive shall include in the budget document recommendations for the use of the excess for the reduction of indebtedness, for the reduction of taxation or for other purposes as in his or her discretion shall serve the best interests of the county.

4. If, for any applicable fund, the estimated revenues for the next ensuing period plus fund balance shall be less than the aggregate of appropriations proposed by the executive for the next ensuing fiscal period, the executive shall include in the budget

document his or her proposals as to the manner in which the anticipated deficit shall be met, whether by an increase in the indebtedness of the county, by imposition of new taxes, by increase of tax rate or in any like manner.

C.1. Justification for revenues and expenditures shall be presented in detail when necessary to explain changes of established practices, unique fiscal practices and new sources of revenue or expenditure patterns or any data the executive deems useful to support the budget. The following are included:

a. nonbudgeted departments and programs expenditures and revenues; that is, intragovernmental service funds;

b. historical and projected agency workload information; and

c. brief explanation of existing and proposed new programs, as well as the purpose and scope of agency activities.

2. Capital improvement program data shall include but not be limited to the streets and highway programming process, which shall specify priorities, guide route establishments, select route design criteria and provide detailed design information for each road or bridge project.

D.1. The department of transportation shall submit a request for CIP project funding, which shall specify project funding levels on a project by project basis, but which shall be appropriated at the road CIP fund level, stated as an aggregate of individual projects for the budget year in question in accordance with K.C.C. 4.04.270. The ((~~chief budget and strategic planning officer~~)) director shall annually review and forecast recommended roads CIP projects to the executive.

2. For projects where a determination of environmental significance has been made pursuant to the state Environmental Policy Act, a study or environmental impact statement or declaration of no significant impact will be prepared by the responsible official. For a determination of environmental significance to be made, the proposal should be at a sufficient stage of contemplation or planning that its principal features can be reliably identified in terms of alternative locations, size, quantities of natural resources involved, changes in land use and general areas of the community and population that may be affected.

3. The executive and council may require other data that they deem necessary, which may include objects of expenditure and other expenditures categories.

E.1. Beginning with budget year 2002, the department of natural resources and parks shall submit a request for CIP project funding, which shall specify project funding levels on a project by project basis, but which shall be appropriated at the wastewater CIP fund level, stated as an aggregate of individual projects, including subprojects, for the budget year in question in accordance with K.C.C. 4.04.280. Except for multiyear construction contracts and carryover amounts approved during the annual CIP reconciliation process, appropriations shall be for one year. All construction contracts including multiyear construction contracts shall be appropriated for the full construction amount in the first year. Any multiyear construction contracts longer than three years must be specifically identified in the department of natural resources and parks wastewater CIP budget request. The request for CIP project funding for wastewater asset management shall include categories of wastewater asset management projects. Wastewater asset management projects shall be appropriated annually at the category

level. The executive-proposed CIP shall allocate anticipated expenditures for each wastewater asset management project category as part of the six-year wastewater CIP. For each category, a proposed project list will be appended. The ((~~chief budget officer~~)) director shall annually review and forecast recommended wastewater CIP projects to the executive.

2. Subsection D.2 and 3 of this section also applies to the wastewater CIP development process.

F.1. Beginning with budget year 2003, the department of natural resources and parks shall submit a request for CIP project funding, which shall also specify project funding levels on a project by project basis but which shall be appropriated at the surface water management CIP fund level, states as an aggregate of individual projects, including subprojects, for the budget year in question in accordance with K.C.C. 4.04.275. Except for multiyear construction contracts and carryover amounts approved during the annual CIP reconciliation process, appropriations shall be for one year. All construction contracts including multiyear construction contracts shall be appropriated for the full construction amount in the first year. Any multiyear construction contracts longer than three years must be specifically identified in the department of natural resources and parks surface water management CIP budget request.

2. For projects where a determination of environmental significance has been made pursuant to the state Environmental Policy Act, a study or environmental impact statement or declaration of no significant impact will be prepared by the responsible official. For a determination of environmental significance to be made, the proposal should be at a sufficient stage of contemplation or planning that its principal features can

be reliably identified in terms of alternative locations, size, quantities of natural resources involved, changes in land use and general areas of the community and population that may be affected.

3. The executive and council may require other data that they deem necessary, which may include objects of expenditure and other expenditures categories.

SECTION 14. Ordinance 12076, Section 3, as amended, and K.C.C. 4.04.040 are each hereby amended to read as follows:

Preparation and administration of budget.

A. ((~~PREPARATION AND DISTRIBUTION.~~)) The council and executive shall execute the responsibilities outlined below in order to accomplish the preparation and distribution of the budget and budget document.

1. ((~~Role of the Executive.~~)) a. ((~~submission of Agency Requests.~~)) At least one hundred thirty-five days ((~~prior to~~)) before the end of the fiscal year, all agencies shall submit to the executive information necessary to prepare the budget.

b. ((~~executive Budget Hearings. Prior to~~)) Before presentation to the council, the executive may provide for hearings on all agency requests for expenditures and revenues to enable him to make determinations as to the need, value or usefulness of activities or programs requested by agencies. The executive may require the attendance of proper agency officials at such hearings, and it shall be their duty to disclose such information as may be required to enable the executive to arrive at final determinations.

c. ((~~submission of Executive Budget.~~)) The executive shall prepare and present an annual budget and budget message to the council no later than seventy-five

days ((~~prior to~~)) before the end of the fiscal year. Copies of the budget and budget message shall be delivered to the clerk and each councilmember.

d. ((~~submission of Proposed Appropriation Ordinance.~~)) The executive shall prepare and present a proposed appropriation ordinance not later than seventy-five days ((~~prior to~~)) before the end of the fiscal year. The proposed appropriation ordinance shall specify by any combination of fund, program, project and((~~/or~~)) agency the expenditure levels for the ensuing budget year.

e. ((~~availability to the Public. Prior to~~)) Before the public hearing on the budget, the budget message and supporting tables shall be furnished to any interested person upon request, and copies of the budget shall be furnished for a reasonable fee as established by ordinance and shall be available for public inspection.

f. ((~~additional Information to be Submitted to the Council.~~)) Seven days ((~~prior to~~)) before the presentation of the annual budget and budget message to the council, the ((~~chief budget and strategic planning officer~~)) director shall submit to the council copies of all agency and departmental budget requests, and departmental and divisional work programs.

2. ((~~Role of the Council.~~)) a. ((~~Review of the Executive Budget.~~)) The council shall review the proposed appropriation ordinance and shall make any changes or additions it deems necessary except the council shall not change the form of the proposed appropriation ordinance submitted by the executive.

b. ((~~Legislative Budget Hearings.~~)) The council shall then announce and subsequently hold a public hearing or hearings as it deems necessary.

c. ((~~Appropriation.~~)) Upon completion of the budget hearings, the council shall by ordinance adopt an appropriation granting authority to make expenditures and to incur obligations, and the council may attach an accompanying statement specifying legislative intent.

3. ((~~Printing and Distribution of the Budget.~~)) The ((~~chief budget and strategic planning officer~~)) director shall be responsible for the printing and distribution of the executive proposed budget and final adopted budget.

B. ((~~ADMINISTRATION OF THE BUDGET.~~)) 1. ((~~Allotment and Work Program.~~)) a. ((~~Establishment of Allotments.~~)) Within thirty days after adoption of the appropriation ordinance, all agencies shall submit to the executive a statement of proposed expenditures at such times and in such form as may be required by the executive, provided that the council is not required to submit an allotment. The statement of proposed expenditures shall include requested allotments of appropriations for the ensuing fiscal period for the department or agency concerned by either program, project, object of expenditure or combination thereof and for such periods as may be specified by the executive.

The executive shall review the requested allotments in light of the department's or agency's plan of work, and may revise or alter requested allotments. The aggregate of the allotments for any department or agency shall not exceed the total of appropriations available to the department or agency concerned for the fiscal period.

b. ((~~Revision of Allotments.~~)) If at any time during the fiscal period the executive ascertains that available revenues for the applicable period will be less than the respective appropriations, the executive shall revise the allotments of departments or

agencies funded from such revenue sources to prevent the making of expenditures in excess of revenues. To the same end, the executive is authorized to assign to, and to remove from, a reserve status any portion of a department or agency appropriation which in the executive's discretion is not needed for the allotment. No expenditure shall be made from any portion of an appropriation which has been assigned to a reserve status except as provided in this section.

2. ((~~Review of Pay and Classification Plans.~~)) The executive shall periodically review any pay and classification plans, and changes thereunder, for fiscal impact, and shall recommend to the council any changes to such plans; provided, that none of the provisions of this subsection shall affect merit systems of personnel management now existing or hereafter established by ordinance relating to the fixing of qualification requirements for recruitment, appointment, promotion or reclassification of employees of any agency.

3. ((~~Transfer of Appropriations between Agencies.~~)) During the last quarter of the fiscal year, the council when requested by the executive may adopt an ordinance to transfer appropriations between agencies; but a capital project shall not be abandoned thereby unless its abandonment is recommended by the department or agency responsible for planning.

4. ((~~Lapsing of Appropriation.~~)) a. Unless otherwise provided by the appropriation ordinances and as set forth herein, all unexpended and unencumbered appropriations in the current expense appropriation ordinances shall lapse at the end of the fiscal year. As used in this subsection, "current expense appropriations" include all non-capital budget appropriations.

b. A portion of any such appropriations may be carried forward into the subsequent fiscal year as part of a savings incentive program administered by the ((~~chief budget and strategic planning officer~~)) director and calculated as follows:

(1) The amount to be carried forward shall be one-half of the unexpended and unencumbered current expense appropriations which exceed underexpenditure requirements established for the year by the ((~~chief budget and strategic planning officer~~)) director, and exceed any loss of grant, contract or similar revenues, which are dedicated to fund the activities supported by the applicable appropriations. These amounts must result from efficiencies and other management measures; and

(2) The calculated amount shall exclude appropriations requested in the subsequent fiscal year to pay for goods or services planned to be purchased during the current fiscal year, but neither delivered nor paid for during the current fiscal year.

c. Amounts carried forward as set forth in this subsection shall be expended to improve productivity and service quality. Authorized uses include, but are not limited to, the acquisition of equipment, testing new service delivery systems and training, so long as such uses do not create recurring, annual obligations beyond minor equipment maintenance costs and are consistent with any applicable county automation standards and plans.

d. By May 1st of each year, the executive shall submit to the council a report describing the amount of savings each agency has carried forward from the prior fiscal year.

e. An appropriation in the capital budget appropriations authorization shall be canceled at the end of the fiscal year, unless the executive submits to the council the

report of the final year end reconciliation of expenditures for all capital projects on or before March 1st of the year following the year of the appropriation, and each year thereafter in which the appropriation remains open.

5. ((~~Current Expense Opportunity Fund.~~)) There is hereby created the current expense opportunity fund. Contributions to the fund shall be made pursuant to the formula contained in this subsection, or by direct appropriation.

a. ((~~Source of Funds.~~)) The amount deposited in the current expense opportunity fund shall be one-half of the unexpended and unencumbered current expense appropriations which exceed underexpenditure requirements established for the year by the office of financial management, and exceed any loss of grant, contract or similar revenues, which are dedicated to fund the activities supported by the applicable appropriations. The calculated amount shall exclude appropriations requested in the subsequent fiscal year to pay for goods or services planned to be purchased during the current fiscal year, but neither delivered nor paid for during the current fiscal year. The funds deposited in the current expense opportunity fund shall be equal to the funds made available to the savings incentive program.

b. ((~~Use of Funds.~~)) The executive may recommend, subject to appropriation, the expenditure of the current expense opportunity funds in the annual budget submittal or in supplemental spending requests.

6. ((~~When Contracts and Expenditures Prohibited.~~)) a. Except as <u>otherwise</u> provided in ((~~paragraph~~)) <u>this subsection B.</u>6 of this section, no agency shall expend or contract to expend any money or incur any liability in excess of the amounts appropriated. Any contract made in violation of this section shall be null and void; any

officer, agent or employee of the county knowingly responsible under such a contract shall be personally liable to anyone damaged by this action. The council when requested to do so by the executive may adopt an ordinance permitting the county to enter into contracts requiring the payment of funds from appropriations of subsequent fiscal years, except that the executive may enter into grant contracts, as provided ((~~by paragraph~~)) under subsection B.7 of this section.

b. The term of a lease or agreement for real or personal property shall not extend beyond the end of a calendar year unless:

(1) funding for the entire term of that lease or agreement is included in a capital appropriation ordinance; or

(2) such lease or agreement includes a cancellation clause under which the lease or agreement may be unilaterally terminated for convenience by the county and costs associated with such termination for convenience, if any, shall not exceed the appropriation for the year in which termination is effected; or

(3) such lease or agreement is authorized by ordinance for such periods and under such terms as the county council shall deem appropriate.

c. Real property shall not be leased to the county for more than one year unless it is included in a capital appropriation ordinance.

d. Nothing in this section shall prevent the making of contracts or the spending of money for capital improvements, nor the making of contracts of lease or for service for a period exceeding the fiscal period in which such contract is made, when such contract is permitted by law.

7. ((~~Grant Contracts.~~)) The executive may enter into contracts to implement grants awarded to the county ((~~prior to~~)) before the appropriation of grant funds, including appropriations that must be made in future years, if the council has received prior notice of the grant application and if either of the following conditions are met: all of the funds to be appropriated under the contract will be from the granting agency; or all financial obligations of the county under the contract are subject to appropriation.

SECTION 15. Ordinance 620, Section 4 (part), as amended, and K.C.C. 4.04.060 are each hereby amended to read as follows:

Types of reports available – county annual report – management fiscal reports – annual postaudit report – budget allotment plan – quarterly management and budget report.

A. ((~~COUNTY ANNUAL REPORT.~~)) The county executive shall annually cause to be prepared and published a comprehensive financial report covering all funds and financial transactions of the county during the preceding fiscal year.

B. ((~~MANAGEMENT FISCAL REPORTS.~~)) The county auditor shall periodically prepare and publish the results of examinations performed by his office of the effectiveness and efficiency of the operation of county agencies.

C. ((~~ANNUAL POST AUDIT REPORT.~~)) The Office of the State Auditor, Division of Municipal Corporations, annually issues the results of their examination of the financial affairs and transactions of the county.

D. ((~~BUDGET ALLOTMENT PLAN.~~)) 1. By February 1(((~~st~~)) of 1982 and each year thereafter, the ((~~E~~))executive shall develop and transmit to the ((~~C~~))council an

allotment plan for each ((~~C~~))county agency based on the budget adopted by the ((~~C~~))council as required in Section 410 of the King County Charter.

2. Within five weeks after the end of each quarter, the ((~~E~~))executive shall notify the ((~~C~~))council of those agencies whose expenditures have deviated from the quarter's allotment by five percent. For those agencies which have exceeded that quarter's allotment by five percent the ((~~E~~))xecutive shall propose an expenditure plan designed either to eliminate the need for a budget increase ((~~and/~~))or to identify the source and amount of a proposed supplemental appropriation, or both.

3. At the end of each quarter, all allotted but unexpended funds which exceed five percent of that quarter's allotment for each ((~~C~~))council appropriated program shall be transferred to the appropriate allotment reserve account. Within five weeks of the end of each quarter the ((~~E~~))executive shall inform the ((~~C~~))council of all transfers of allotted but unexpended funds to ((~~and/~~))or from, or to and from, each allotment reserve account.

4. This ((~~ordinance~~)) section shall not apply to individual C.I.P. projects approved by the ((~~C~~))ouncil.

SECTION 16. Ordinance 12076, Section 4, and K.C.C. 4.04.075 are each hereby amended to read as follows:

Fiscal note procedure.

A. The ((~~chief budget and strategic planning officer~~)) director shall establish a procedure for the preparation of fiscal notes on the expected impact of motions or ordinances which will increase or decrease county revenues or expenditures. Such fiscal notes shall document the impact of proposed legislation for the current fiscal year and a cumulative forecast for each of the succeeding three fiscal years. The ((~~chief budget and~~

((~~strategic planning officer~~)) director shall coordinate the development of fiscal notes with all affected agencies. Fiscal notes shall be attached to all legislation transmitted by the executive, provided, that a fiscal note may not be required when the executive certifies in writing that the subject legislation has no significant fiscal impact on the operating and/or capital budget.

B. The fiscal note form used by the ((~~chief budget and strategic planning officer~~)) director shall be the form approved by the council.

C. All fiscal notes shall contain:

1. A brief descriptive title of the motion or ordinance.

2. An estimate of revenue impact of the subject motion or ordinance. Revenue impact shall be displayed for the current fiscal year and the three subsequent fiscal years.

3. An estimate of the expenditure impact of the subject motion or ordinance on the operating and/or capital budget. Expenditure impact shall be displayed for the current fiscal year and the three subsequent fiscal years. This section shall present a detailed breakdown of the anticipated expenditure by fiscal year.

4. An explanation of how the revenue or expenditure impacts were developed. This section shall include, but not be limited to quantifiable data which illustrates a significant workload increase or decrease caused by adoption of the subject motion or ordinance; major assumptions made in preparing the fiscal note and indicate whether passage of the subject motion or ordinance was anticipated in the current fiscal year's annual budget.

D. The ((~~chief budget and strategic planning officer~~)) director shall also provide a fiscal note on any legislative proposal requested by a councilmember. Such fiscal note

shall be returned to the requesting councilmember and the council clerk's office for distribution to all councilmembers and attachment to the proposed motion or ordinance within five working days. The lack of any fiscal note shall not affect the validity of any motion or ordinance adopted by the council.

SECTION 17. Ordinance 12076, Section 5, as amended, and K.C.C. 4.04.200 are each hereby amended to read as follows:

Executive responsibilities.

A. The executive shall be responsible for the implementation of all CIP projects pursuant to adopted project budgets and schedules. However, road CIP projects may be implemented in accordance with the roads capital improvement budgeting procedures in K.C.C. 4.04.270, wastewater CIP projects may be implemented in accordance with the wastewater capital improvement budgeting procedures in K.C.C. 4.04.280 and surface water management CIP projects may be implemented in accordance with the surface water management capital improvement budgeting procedures in K.C.C. 4.04.275. At least fifteen days before advertising for construction bids for any capital project, the council chair and councilmembers in whose district construction will take place shall be notified. The notification shall include project identification, advertising dates and a summary description of the work to be performed, though failure to comply with this provision shall not delay bid advertisement.

B. The executive shall be responsible for implementation of council adopted CIP projects to ensure their completion on schedule and within adopted budgets. However, roads CIP projects may be reprogrammed in accordance with K.C.C. 4.04.270, wastewater CIP projects may be reprogrammed in accordance with K.C.C. 4.04.280 and

surface water management CIP projects may be reprogrammed in accordance with K.C.C. 4.04.275. The budget for each roads CIP project shall not exceed by more than fifteen percent the amount specified for that project in the adopted six-year roads CIP, except when the amount is modified by ordinance or in accordance with the CIP exceptions notification process and the budget for each surface water management and wastewater CIP project shall not exceed by more than fifteen percent the amount specified for that project in the adopted six-year surface water management or wastewater CIP, except when the amount is modified by ordinance or in accordance with the CIP exceptions notifications process. The executive shall select consultants soliciting work on all CIP projects. The executive shall implement this section by the establishment of rules and procedures that provide for consultant selection, ongoing CIP design review and project implementation.

C. All above-grade, CIP projects shall be subject to the following process:

1. An operational master plan shall be developed by the agency requesting a CIP project in conjunction with the ((~~chief budget and strategic planning officer~~)) director and shall be submitted to the executive and the council for approval;

2. A capital improvement plan, based upon the adopted county space plan, where applicable, and the approved operational master plan, shall be developed by the user agency with assistance from the implementing agency and shall be submitted to the executive and the council for approval. Capital projects that involve the development of new parks or significant addition to or rehabilitation of existing parks shall require a public meeting in the affected community at the program plan and site master plan stage, before submitting these plans to the executive and council for approval;

3. A project program plan, based upon the adopted county space plan, where applicable, and the approved operational master plan, shall be developed by the user agency, with assistance from the implementing agency, for each requested CIP. This plan shall be submitted to the executive and the council for approval. This plan shall specify which projects will require a site master plan;

4. A site master plan shall be developed by the implementing agency, with input from the user agency, for all capital improvements that involve multiple projects, are complex in nature, or are otherwise identified as requiring such a plan in the project program plan. This plan shall be submitted to the executive and council for approval; and

5. The executive may exempt smaller scale projects from the requirements in subsection C.1 and C.2 of this section, if criteria for granting exemptions are established, and approved by the council, and if the implementing agency certifies the project program plan and related CIP or lease request is in conformance with the adopted county space plan.

SECTION 18. Ordinance 12076, Section 8, as amended, and K.C.C. 4.08.005 are each hereby amended to read as follows:

Definitions. As used in this chapter, the following terms shall have the following meanings:

A. "Manager" means the manager of the finance and business operations division.

B. ((~~"Chief budget officer" means that individual designated by the executive to perform the budgeting functions assigned to the executive under K.C.C. chapter 2.16.~~

((~~C.~~)) "First tier fund" means each fund listed or described as a first tier fund in K.C.C. chapter 4.08.

((~~D.~~)) C. "Fund manager" means that person holding or exercising the powers of the position or office specified in K.C.C. chapter 4.08 as the manager for each fund. As to any fund created for which no fund manager is designated, the manager of the finance and business operations division shall be deemed to be the fund manager.

((~~E.~~)) D. "Second tier fund" means each fund listed or described as a second tier fund in K.C.C. chapter 4.08.

SECTION 19. Ordinance 12076, Section 33, as amended, and K.C.C. 4.10.010 are each hereby amended to read as follows:

Definitions. As used in this chapter, the following terms shall have the following meanings:

A. "Manager"((~~:~~)) means ((~~T~~))the manager of the finance and business operations division.

B. ((~~"Chief budget officer": That individual designated by the executive to perform the budgeting functions assigned to the executive under K.C.C. chapter 2.16.~~

~~C.~~)) "First tier fund": Each county fund listed or described as a first tier fund in K.C.C. chapter 4.08.

((~~D.~~)) C. "Fund manager"((~~:~~)) means ((~~T~~))that person holding or exercising the powers of the position or office specified in K.C.C. chapter 4.08 as the manager for each fund and such persons to whom the fund manager has delegated duties and responsibilities as provided in K.C.C. chapter 4.08.

((~~E.~~)) D. "Residual treasury cash"((~~:~~)) means ((~~A~~))any cash in the custody or control of the finance and business operations division as to which no investment directive under the first paragraph of RCW 36.29.020, as now or hereafter amended, has been received by the manager of the finance and business operations division. Residual treasury cash includes county cash for which the fund manager has not directed a specific fund investment pursuant to this chapter.

((~~F.~~)) E. "Second tier fund"((~~: A~~)) means a fund that is not to be invested for its own benefit under the first paragraph of RCW 36.29.020 and listed as a second tier fund in K.C.C. chapter 4.08.

SECTION 20. Ordinance 12076, Section 35, as amended, and K.C.C. 4.10.050 are each hereby amended to read as follows:

Executive finance committee. The executive finance committee is hereby confirmed as being the "county finance committee", referred to in RCW 36.29.020 and RCW 36.48.070, and shall be composed of the following: the county executive((~~,~~)); the manager of the finance and business operations division((~~, chief budget officer,~~)); the director of the office of management and budget; and the chairperson of the county council. The executive finance committee shall be responsible for directing the manager of the finance and business operations division in determining the maximum prudent extent to which residual treasury cash shall be invested pursuant to RCW 36.29.020 and this chapter. Actions of the committee shall be by majority vote except when the chairperson of the council determines such action constitutes a policy determination, as opposed to an administrative determination, which should be referred to the council. The

chairperson of the council may defer action on the proposal until the council makes such policy determination regarding the proposed action.

SECTION 21. Ordinance 12076, Section 38, and K.C.C. 4.12.040 are each hereby amended to read as follows:

Risk management committee.

A. ((~~CREATION AND COMPOSITION.~~)) There is created a risk management committee to be composed of the following individuals: RM((~~,~~)); safety manager((~~,~~)); chief civil deputy((~~,~~)); and ((~~chief budget and strategic planning officer~~)) the director of the office of management and budget. The RM shall chair the committee. The safety manager shall be a nonvoting member of the committee and shall serve to inform and advise the committee on safety matters and coordinate employee safety programs with the risk identification and control functions of the committee.

B. ((~~DUTIES OF COMMITTEE.~~)) The risk management committee shall:

1. Make recommendations to the council and executive regarding risk management policy and shall cause such policy to be established and kept current;

2. Approve the selection of all insurance brokers submitted to it, as a result of a competitive procurement process;

3. Render advice to the RM on matters concerning the purchase of insurance policies and advise on the design of insurance and funded self-insurance programs;

4. Advise the RM concerning matters of risk management policy; and

5. Approve the purchase of all insurance policies.

SECTION 22. Ordinance 13983, Section 3, as amended, and K.C.C. 4.19.030 are each hereby amended to read as follows:

Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "Administrator" means the chief officer of the office of ((~~regional planning and policy~~)) business relations and economic development.

B. "Economically distressed area" means a geographic area determined by the county council to require the use of incentives in order to stimulate economic activity and revitalize declining neighborhoods.

C. "Located within" the county or an economically distressed area means that a business that at least:

1. Has its primary offices or distribution points, other than residential or post office box, physically within the relevant boundaries;

2. Lists the address on a valid business permit as being within the relevant boundaries;

3. Has been doing business within the relevant boundaries for at least twelve months; and

4. Submits other proof of compliance with subsection C. 1. through 3. of this section as required by the administrator.

D. "Small economically disadvantaged business" means that a business and the person or persons who own and control it are in a financial condition ((~~which~~)) that puts the business at a substantial disadvantage in attempting to compete for public contracts. In assessing these financial conditions, the administrator shall substantially adopt the approach used by the federal Small Business Administration, but the administrator shall adjust the Small Business Administration dollar ceilings for various standard business

classifications and levels for owners' personal net worth to account for local market conditions. Initially, the dollar ceiling for standard business classifications shall be fifty percent of the 1999 Small Business Administration thresholds.

SECTION 23. Ordinance 12045, Section 5, as amended, and K.C.C. 4.56.070 are each hereby amended to read as follows:

Facilities management division, county departments – ((~~R~~))responsibilities and powers in declaring county real property surplus.

A. The facilities management division shall no later than the end of the first quarter of the calendar year, maintain and update a current inventory of all county titled real property with detailed information as to current departmental custodianship and as to the characteristics that determine its economic value and potential uses((~~; provided, that~~)). However, all county roads shall be excluded from ((~~the provision of~~)) this section.

B. No later than ((~~June 30th~~)) April 1 of each calendar year, each department shall submit a report to the facilities management division on the status of all real property for which the department is the custodian and include in the report any change in use or status since the previous year's report.

C. County departments shall be required((~~,~~)) to report no later than ((~~June 30th~~)) April 1 of every ((~~third calendar~~)) year ((~~beginning with 1996,~~)) to justify departmental retention of all real property for which the department is the custodian to the facilities management division.

1. If in the judgment of the facilities management division, a county department cannot justify the retention of real property for which it is the custodian or if a department determines that real property is surplus to its needs, the facilities management division

shall determine whether any other county department has a need for the property that is related to the provision of essential government services, including, but not limited to, services for the public health, public safety((,)) or services related to transportation, water quality, surface water or other utilities. If the property is not needed for the provision of essential government services, the facilities management division shall then determine if the parcel is suitable for affordable housing. If it is deemed suitable for housing the county shall first attempt to make it available or use it for affordable housing ((~~pursuant to~~)) in accordance with K.C.C. 4.56.085 or 4.56.100. Suitable for affordable housing for the purpose of this section means the parcel is located within the Urban Growth Area, zoned residential and the housing development is compatible with the neighborhood. If the property is not deemed suitable for the purposes described ((~~above~~)) in this subsection C.1., then it shall be determined whether any other department has a need for the parcel.

2. If another department can demonstrate a need for said real property, custodianship of ((~~such~~)) the real property shall be transferred to that department without any financial transaction between present and future custodial organizations, except as required by RCW 43.09.210, as amended, or under grants.

3. If ((~~no other~~)) another department ((~~can~~)) cannot demonstrate a need for ((~~such~~)) the real property, ((~~said~~)) the real property shall be declared surplus to the future foreseeable needs of the county and may be disposed of as set forth in this chapter.

D. The facilities management division shall review and make recommendations to the executive for uses other than the sale of surplus real property ((~~prior to~~)) before a decision by the executive to dispose of such properties through sale. Other possible uses

that shall be considered by the division in accordance with ((~~the provisions of~~)) this chapter((~~,~~)) are:

1. Exchanges for other privately or publicly owned lands that meet the county's land needs;

2. Lease with necessary restrictive covenants;

3. Use by other governmental agencies;

4. Retention by the county if the parcel is classified as floodplain or slide hazard property;

5. Use by nonprofit organizations for public purposes; and

6. Long-term lease or sale for on-site development of affordable housing.

E. The facilities management division in consultation with the ((~~office of regional planning and policy and the~~)) department of community and human services shall, no later than ((~~the third quarter of the calendar~~)) July 1 of each year, submit a report to the council identifying surplus county real property suitable for the development of affordable housing. Affordable housing for the purpose of this chapter means residential housing that is rented or owned by a person:

1. Who is from a special needs population and whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income; or

2. Who qualifies as a very low-income, low-income((~~,~~)) or moderate-income household as those terms are defined in RCW 43.63A.510.

SECTION 24. Ordinance 12394, Section 3, as amended, and K.C.C. 4.56.085 are each hereby amended to read as follows:

Public/private development projects on or with county property.

A. The office of ((~~regional planning and policy~~)) business relations and economic development shall assist the department of executive services to determine the potential public/private uses of county owned real and personal property.

B. The department of executive services shall assist county departments in capital facilities planning and, in collaboration with the office of ((~~regional planning and policy~~)) business relations and economic development, investigate the feasibility of, and when feasible, facilitate, public/private partnerships in the use of county property, ((~~pursuant to~~)) in accordance with K.C.C. 4.56.070. These investigations shall include such actions as:

1. ((~~Prepare~~)) Preparing market and financial feasibility studies, ((~~hold~~)) holding public meetings((~~,~~)) and ((~~prepare~~)) preparing recommendations;

2. ((~~Brief~~)) Briefing the executive and council;

3. ((~~Solicit~~)) Soliciting developer proposals;

4. ((~~Select~~)) Selecting the developer;

5. ((~~Obtain~~)) Obtaining council approval;

6. ((~~Negotiate~~)) Negotiating the developer agreement; and

7. ((~~Monitor~~)) Monitoring the development and use of assets.

C. The office of ((~~regional planning and policy~~)) business relations and economic development shall provide assistance to other county departments to determine if real property or other assets may be managed for economic development purposes or administered in a manner that will provide revenue to the county.

SECTION 25. Ordinance 14214, Section 6, and K.C.C. 9.14.050 are each hereby amended to read as follows:

Lead agency - responsibilities.

A. The department of natural resources shall be the lead agency for King County's groundwater protection program and shall be responsible for the following activities:

1. Oversee implementation of King County's groundwater protection program;

2. Provide staff support to any groundwater protection committee appointed by King County and respond to the committees in a timely manner regarding the adoption of committee recommendations;

3. Identify sources and methods of funding regional groundwater protection services and seek funding for these services;

4. Develop any combination of interlocal agreements, memorandums of understanding and operating agreements with cities, special purpose districts, sewer and water utilities and associations, and water purveyors for implementation of groundwater management plans and regional groundwater protection services in King County. These agreements shall include provisions addressing the scope, governance, structure, funding and transition to implementation of certified groundwater management plans and regional groundwater protection services in King County;

5. Consult with the Washington state Department of Ecology about the feasibility of integrating the goals and implementation of certified groundwater management plans, where possible, with adopted watershed plans to avoid creating redundant work programs;

6. Coordinate with the department of development and environmental services for any review required pursuant to K.C.C. Title 21A regarding land use, water use, environmentally sensitive areas and special district overlays, or the exercise of other authorities, that relate to groundwater protection;

7. Coordinate with the Seattle-King County department of public health for work performed pursuant to the King County Board of Health Code Title 10, Solid Waste Handling, Title 11, Hazardous Chemicals, Title 12, Water, Title R12, Water and Title 13, On-site Sewage, or the exercise of other authorities, that relate to groundwater protection;

8. Coordinate with the department of development and environmental services for work performed pursuant to K.C.C. Title 20, Planning, or the exercise of other authorities, that relate to groundwater protection;

9. Coordinate internally within the department of natural resources for work performed under K.C.C. Title 9, Surface Water Management, K.C.C. chapter 20.70, Critical Aquifer Recharge Areas and K.C.C. Title 28, Water Pollution Abatement and Wastewater Treatment, or the exercise of other authorities, that relate to groundwater protection;

10. In consultation with the department of development and environmental services, the Seattle-King County department of public health, ((~~the office of regional policy and planning,~~)) and divisions within the department of natural resources, develop an integrated annual work plan that incorporates each of these agencies work programs relative to groundwater protection and that delineates the groundwater protection services provided by King County. A draft annual work plan shall be submitted to any groundwater protection committee appointed by King County for their review and

recommendations. The department of natural resources shall distribute the final annual work plan to the King County council, any groundwater protection committee appointed by King County, cities, special purpose districts, sewer and water utilities and associations, water purveyors and other entities that are implementing activities recommended in certified groundwater management plans;

11. Develop a three-year work plan that identifies long-term needs for groundwater protection, in consultation with any groundwater protection committee appointed by King County, cities, special purpose districts, sewer and water utilities and associations, and water purveyors. The work plan should include an examination by the Seattle-King County department of public health of the effectiveness of the current compliance methodology for violations of regulations governing operation, maintenance and repair of groundwater facilities by public water systems or individuals, and an examination of alternative compliance methodologies that provide for a hierarchy of responses to such violations (e.g. education, site visit, notification, fines, civil penalty, operating restrictions). The work plan shall include an examination of existing county fees or charges for groundwater testing that could reduce any current testing disincentives caused by unaffordability of those fees or charges. The department of natural resources shall distribute the three-year work plan to the King County council, any groundwater protection committee appointed by King County, cities, special purpose districts, sewer and water utilities and associations, water purveyors and other entities that have a role in the three-year work plan;

12. Provide an annual written report on the groundwater protection program. This report shall include, but not be limited to, information from the prior calendar year

on groundwater protection services provided by King County, expenditures for the groundwater protection program and recommendations from any groundwater protection committee appointed by King County. By March 31 of each year this report shall be submitted to the King County council and any groundwater protection committee appointed by King County.

B. The King County auditor shall review whether or not groundwater protection services are being provided by King County and provide to the King County council by July 2003 an inventory of groundwater protection services that are provided and are not provided by King County.

C. The regional water quality committee is requested to make recommendations to the King County council between April and September 2003 on the efficacy of the groundwater protection program in King County, including but not limited to the following areas: public outreach, education and stewardship; data management; coordination of groundwater protection activities with all interested entities, users and individuals; regional involvement in the groundwater protection program; development of agreements and funding for regional groundwater protection services, and the role of the department of natural resources in providing groundwater protection services.

SECTION 26. Ordinance 1709, Section 6, as amended, and K.C.C. 13.24.080 are each hereby amended to read as follows:

Utilities technical review committee - creation and composition. A utilities technical review committee is created consisting of the following representatives as appointed by the director of each department((.)):

A. Two representatives from the department of natural resources and parks;

B. One representative from the department of transportation;

C. One representative from the department of development and environmental services;

D. One representative from the Seattle-King County department of public health;

E. One representative from the ((~~office of regional policy and planning;~~

~~F. One representative from the~~))facilities management division of the department of executive services; and

((~~G~~))F. One representative from the King County council staff.

SECTION 27. Ordinance 13147, Section 21, as amended, and K.C.C. 20.18.050 are each hereby amended to read as follows:

Site-specific land use map amendments initiation.

A. Site-specific land use map amendments are legislative actions that may only be initiated by property owner application, by council motion, or by executive proposal. All site-specific land use map amendments must be evaluated by the hearing examiner ((~~prior to~~)) before adoption by the council ((~~pursuant to the provisions of~~)) in accordance with this chapter.

1. If initiated by council motion, the motion shall refer the proposed site-specific land use amendment to the department of development and environmental services for preparation of a recommendation to the hearing examiner. The motion shall also identify the resources and the work program required to provide the same level of review accorded to applicant-generated amendments. An analysis of the motion's fiscal impact shall be provided to the council ((~~prior to~~)) before adoption. If the executive

determines that additional funds are necessary to complete the work program, the executive may transmit an ordinance requesting the appropriation of supplemental funds.

2. If initiated by executive proposal, the proposal shall refer the proposed site-specific land use amendment to the department of development and environmental services for preparation of a recommendation to the hearing examiner.

3. If initiated by property owner application, the property owner shall submit a docketed request for a site-specific land use amendment. Upon receipt of a docketed request for a site-specific land use amendment, the request shall be referred to the department of development and environmental services for preparation of a recommendation to the hearing examiner.

B. All proposed site-specific land use map amendments, whether initiated by property owner application, by council motion, or by executive proposal shall include the following:

1. Name and address of the owner(s) of record;

2. Description of the proposed amendment;

3. Property description, including parcel number, property street address and nearest cross street;

4. County assessor's map outlining the subject property; and

5. Related or previous permit activity.

C. Upon initiation of a site specific land use map amendment, an initial review conference will be scheduled by the department of development and environmental services. The owner(((~~s~~))) or owners of record of the property shall be notified of and invited to attend the initial review conference. At the initial review conference, the

department will review the proposed amendment's consistency with applicable county policies or regulatory enactments including specific reference to comprehensive plan policies, countywide planning policies and state Growth Management Act requirements. The proposed amendment will be classified pursuant to K.C.C. 20.18.040 and this information either will be provided at the initial review conference or in writing to the owner(((~~s~~))) or owners of record within thirty days.

D. If a proposed site-specific land use map amendment is initiated by property owner application, the property owner shall, following the initial review conference, submit the completed application including an application fee and an environmental checklist to the department of development and environmental services to proceed with review of the proposed amendment.

E. If a proposed site-specific land use map amendment is initiated by council motion, following the initial review conference, the council shall submit an environmental checklist to the department of development and environmental services to proceed with review of the proposed amendment.

F. If a proposed site-specific land use map amendment is initiated by executive proposal, following the initial review conference, the ((~~office of regional policy and planning~~))executive shall submit an environmental checklist to the department of development and environmental services to proceed with review of the proposed amendment.

G. Following the submittal of the information required by subsections D, E or F, the department of development and environmental services shall submit a report including an executive recommendation on the proposed amendment to the hearing

examiner within one hundred twenty days. The department of development and environmental services shall provide notice of a public hearing and notice of threshold determination pursuant to K.C.C. 20.20.060 F, G and H. The hearing will be conducted by the hearing examiner pursuant to K.C.C. 20.24.400. Following the public hearing, the hearing examiner shall prepare a report and recommendation on the proposed amendment pursuant to K.C.C. 20.24.400. A compilation of all completed reports will be considered by the council pursuant to K.C.C. 20.18.070.

H. A property-owner-initiated for a site-specific land use map amendment may be accompanied by an application for a zone reclassification to implement the proposed amendment, in which case administrative review of the two applications shall be consolidated to the extent practical consistent with this ordinance and K.C.C. chapter 20.20. The council's consideration of a site-specific land use map amendment is a legislative decision which will be determined ((~~prior to~~)) before and separate from their consideration of a zone reclassification which is a quasi-judicial decision. If a zone reclassification is not proposed in conjunction with an application for a site-specific land use map amendment and the amendment is adopted, the property shall be given potential zoning. A zone reclassification pursuant to K.C.C. 20.20.020 will be required in order to implement the potential zoning.

I. Site-specific land use map amendments for which a completed recommendation by the hearing examiner has been submitted to the council by January 15 will be considered concurrently with the annual amendment to the comprehensive plan. Site specific land use map amendments for which a recommendation has not been

issued by the hearing examiner by January 15 will be included in the next appropriate review cycle following issuance of the examiner's recommendation.

J. No amendment to a land use designation for a property may be initiated unless at least three years have elapsed since council adoption or review of the current designation for the property. This time limit may be waived by the executive or the council if the proponent establishes that there exists either an obvious technical error or a change in circumstances justifying the need for the amendment.

1. A waiver by the executive shall be considered after the proponent has submitted a docket request in accordance with K.C.C. 20.18.140. The executive shall render a waiver decision within forty-five days of receiving a docket request and shall mail a copy of this decision to the proponent.

2. A waiver by the council shall be considered by motion.

SECTION 28. Ordinance 13274, Section 7, as amended, and K.C.C. 21A.37.070 are each hereby amended to read as follows:

Transfer of development rights (TDR) program - sending site certification and interagency review committee process.

A. An interagency review committee, chaired by the directors of the department of development and environmental services and the department of natural resources and parks, or their designees, shall be responsible for qualification of sending sites. Determinations on sending site certifications made by the committee are appealable to the examiner pursuant to K.C.C. 20.24.080. The department of natural resources and parks shall be responsible for preparing a written report, which shall be signed by the director of the ((~~office of regional policy and planning~~))department of natural resources and parks

or the director's designee, documenting the review and decision of the committee. The committee shall issue a TDR certification letter within sixty days of the date of submittal of a completed sending site certification application.

B. Responsibility for preparing a completed application rests exclusively with the applicant. Application for sending site certification shall include:

1. A legal description of the site;

2. A title report;

3. A brief description of the site resources and public benefit to be preserved;

4. A site plan showing the proposed conservation easement area, existing and proposed dwelling units, submerged lands, any area already in a conservation easement or other similar encumbrance and any other area, except setbacks, required by King County to remain open;

5. Assessors map or maps of the lot or lots;

6. A statement of intent indicating whether the property ownership, after TDR certification, will be retained in private ownership or dedicated to King County or another public or private nonprofit agency;

7. Any or all of the following written in conformance with criteria established through a public rule consistent with K.C.C. chapter 2.98, if the site is qualifying as habitat for a threatened or endangered species:

a. a wildlife habitat conservation plan((~~, or~~));

b. a wildlife habitat restoration plan((,)) or

c. a wildlife present conditions report;

8. A forest stewardship plan, written in conformance with criteria established through a public rule consistent with K.C.C. chapter 2.98, if required under K.C.C. 21A.37.060B.3 and 6;

9. An affidavit of compliance with the reforestation requirements of the Forest Practices Act and any additional reforestation conditions of the forest practices permit for the site, if required under K.C.C. 21A.37.020E.

10. A completed density calculation worksheet for estimating the number of available development rights, and

11. The application fee consistent with K.C.C. 27.36.020.

SECTION 29. Ordinance 13733, Section 10, as amended, and K.C.C. 21A.37.110 are each hereby amended to read as follows:

Transfer of development rights (TDR) bank expenditure and purchase authorization.

A. The TDR bank may purchase development rights from qualified sending sites at prices not to exceed fair market value and to sell development rights at prices not less than fair market value. The TDR bank may accept donations of development rights from qualified TDR sending sites.

B. The TDR bank may use funds to facilitate development rights transfers. These expenditures may include, but are not limited to, establishing and maintaining internet web pages, marketing TDR receiving sites, procuring title reports and appraisals and reimbursing the costs incurred by the department of natural resources and parks, water and land resources division, or its successor, for administering the TDR bank fund and executing development rights purchases and sales.

C. The TDR bank fund shall not be used to cover the cost of identifying and qualifying sending and receiving sites, or the costs of providing staff support for the TDR interagency review committee or ~~((the office of regional policy and planning))~~the department of natural resources and parks.

SECTION 30. Ordinance 13733, Section 15, as amended, and K.C.C. 21A.37.160 are each hereby amended to read as follows:

Transfer of development rights (TDR) program - establishment and duties of the TDR executive board.

A. The TDR executive board is hereby established. The TDR executive board shall be composed of the director of the budget office, the director of the department of natural resources and parks, the director of the department of transportation, the director of finance and the director of the ((~~office of regional policy and planning~~))office of business relations and economic development, or their designees. A representative from the King County council staff, designated by the council chair, may participate as an ex officio, nonvoting member of the TDR executive board. The TDR executive board shall be chaired by the director of the ((~~office of regional policy and planning~~))department of natural resources and parks or that director's designee.

B. The issues that may be addressed by the executive board include, but are not limited to, using site evaluation criteria established by administrative rules, ranking and selecting sending sites to be purchased by the TDR bank, recommending interlocal agreements and the provision of TDR amenities, if any, to be forwarded to the executive, identifying future funding for amenities in the annual budget process, enter into other written agreements necessary to facilitate density transfers by the TDR bank and

otherwise oversee the operation of the TDR bank to measure the effectiveness in achieving the policy goals of the TDR program.

C. The ((~~office of regional policy and planning~~))department of natural resources and parks shall provide lead staff support to the TDR executive board. Staff duties include, but are not limited to:

1. Making recommendations to the TDR executive board on TDR program and TDR bank issues on which the TDR executive board must take action;

2. Facilitating development rights transfers through marketing and outreach to the public, community organizations, developers and cities;

3. Identifying potential receiving sites;

4. Developing proposed interlocal agreements with cities;

5. Assisting in the implementation of TDR executive board policy in cooperation with other departments;

6. Ranking certified sending sites for consideration by the TDR executive board;

7. Negotiating with cities to establish city receiving areas with the provision of amenities;

8. Preparing agendas for TDR executive board meetings;

9. Recording TDR executive board meeting summaries;

10. Preparing administrative rules in accordance with K.C.C. chapter 2.98 to implement this chapter; and

11. Preparing annual reports on the progress of the TDR program to the council with assistance from other departments.

SECTION 31. This ordinance takes effect January 1, 2003.

Ordinance 14561 was introduced on 9/3/2002 and passed as amended by the Metropolitan King County Council on 12/16/2002, by the following vote:

Yes: 11 - Ms. Sullivan, Ms. Edmonds, Ms. Lambert, Mr. Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Pullen, Mr. Gossett, Ms. Hague and Ms. Patterson
No: 0
Excused: 2 - Mr. von Reichbauer and Mr. Irons

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Cynthia Sullivan, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this 27 day of December, 2002.

Ron Sims, County Executive

Attachments None

CWP Contracts and Work List: January 2017 – March 2020

CWP had contracts with the following entities/cities which varies by contract, season, and/or type of work requested. The work was primarily physical labor like clearing vegetation, removing trash, and maintaining government owned property and parks:

Lake Forest Park
Kenmore
Newcastle
Burien
SeaTac
Tukwila
Issaquah
Snoqualmie Indian Tribe
Seattle City Light
King County Metro

CWP performed general landscape and trash removal work for 20+ different King County departments, divisions, or groups. They include:

DES
DNRP x 5-10 Groups
DNRP Rivers 2-3 groups
WLRD 2+ groups
Wastewater Treatment 2+ groups
Solid waste
FMD 2+ groups
Property Services
Real Property

NO. 98824-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Petitioner.

v.

STEVEN G. LONG,

Respondent.

PROFESSORS *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENT

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

The identity and interest of Amici are set forth in the Motion of Professors for Leave to File Amicus Curiae Brief in Support of Respondent.

II. COURT OF APPEALS DECISION

This brief is filed in support of the appeal of Respondent Steven Long and in response to the Court of Appeals' decision in *City of Seattle v. Long*, 13 Wn.App.2d 709 (2020).

III. STATEMENT OF THE CASE

Amici Professors adopt Respondent Long's statement of the case.

IV. ARGUMENT

A. Once Contact is Made with the Criminal Legal System, People Face a Broad Range of Monetary Sanctions and Financial Penalties

1. The Imposition of Monetary Sanctions is a National Phenomenon

While monetary sanctions have been imposed since the creation of the formal American criminal justice system, the practice ballooned in the early 1990's.[1] Around that time, states began to formally codify their financial penalties and the number and types of fees and surcharges have

[1] Alexes Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary U.S.*, 115(6) American Journal of Sociology 1755-99 (2010).

expanded.[2] As a result, the majority of people convicted of misdemeanor and felony crimes in the U.S. receive some type of monetary sanctions. One recent study found that in fifteen states studied, all impose fees upon conviction, all impose parole, probation or other supervision fees, and all have laws authorizing the imposition of jail or prison fees.[3] Evidence further indicates that in most jurisdictions monetary sanctions (fines, fees, restitution, court costs) are levied in addition to the other common sentencing options such as community service, probation and incarceration.[4] In addition to these sentences, people face court related costs contracted with third party entities which may include, for example, per

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[2] Alexes Harris, *A Pound of Flesh: Monetary Sanctions as a Punishment for the Poor* (2016).

[3] *See* Alicia Bannon, Mitali Nagrecha, and Rebekah Diller, *Criminal Justice Debt: A Barrier to Re-entry*, Brennan Center for Justice (2010) (available at www.brennancenter.org/page//Fees%20and%20Fines%20FINAL.pdf). The states include: Alabama, Arizona, California, Florida, Georgia, Illinois, Louisiana, Michigan, Missouri, New York, North Carolina, Ohio, Pennsylvania, Texas and Virginia. Washington is consistent with these states' policies. *See id.*

[4] *See also* Christopher R. Adamson *Punishment After Slavery: Southern State Penal Systems, 1865–1890*, 30 Social Problems 555–69 (1983); Douglas Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (2009); Alexes Harris, Heather Evans, & Katherine Beckett, *Courtesy Stigma and Monetary Sanctions: Toward a Socio-Cultural Theory of Punishment*, 76(2) American Sociological Review 234–64 (2011); David M Oshinsky, *Worse Than Slavery* (1997).

payment charges, private collection costs, and costs related to impoundment and towing.[5]

Even seemingly, small amounts owed to the courts and contracted third party entities can create inordinate significance in the lives of poor people who have virtually no access to income or wages while incarcerated. Most people are not able to make payments toward their LFOs while incarcerated, and are thus released from jail or prison in precarious financial situations. Because of this debt, people remain closely connected to the surveillance and sanctioning of criminal legal agents and to the stigmatizing effects of their conviction and citation for long periods of time. The added interest and surcharges contribute to expanding debts at a time when earning prospects are diminished if not already dismal. As a result, monetary sanctions associated with legal contact contribute to the accumulation of disadvantage by reducing people's income and creating long-term debt.[6] These costs can include, fines, fees, restitution, forfeitures, surcharges, and costs related to other sentences (e.g., impoundment, probation, electronic monitoring). These costs sentenced to people who are poor, without an

[5] Alexes Harris Tyler Smith and Emmi Obara, *Justice "Cost Points": Examination of Privatization within Public Systems of Justice*, Crime and Public Policy (2019).

[6] Harris, *A Pound of Flesh.*

assessment of current ability to pay, can be excessive in relation to income and savings for many.

2. Monetary Sanctions are Routinely Imposed in Washington State

In Washington, monetary sanctions sentenced in the superior court are called Legal Financial Obligations (LFOs). The Revised Code of Washington (RCW) establishes which LFOs "shall be" assessed. In general, courts across the state interpret this language as mandatory sanctions and judges impose a $500 victim penalty assessment (VPA) and a $100 DNA collection fee as the mandatory minimums. *See generally* RCW 7.68.035 (VPA); RCW 43.43.7541 (DNA collection fee). Just as state sentencing guidelines set mandatory minimum custodial sentence lengths for particular offenses, the total mandatory minimum fiscal penalty for any felony conviction in Washington is $600. Other mandatory penalties include court-ordered restitution (RCW 9.94A.750) and forfeitures. *See generally* RCW 9A.83.030; RCW 10.105.010; RCW 69.50.505. *See also* RCW 19.290.230; RCW 77.15.070.

Additionally, a number of other discretionary sentences in the form of fines and fees can be imposed. Consequently, the mean sentenced LFO

in Washington is $1,300, more than two times the statutory minimum.[7] While the sentences are imposed by judges, payments are monitored by court clerks or private collection companies.

In Washington State, analysis of Administrative Office of the Court (AOC) data show that in 2014 Washington State courts sentenced over $350 million to defendants. These amounts varied by court type with District Court sentencing the most with $200 million, followed by Municipal courts at $100 million, and Superior courts at just under $50 million.[8] Furthermore, the total revenue from District and Municipal Court LFO Collections in 2014 was $249,044,370 (unadjusted for inflation). For Superior Court, $4,397,591 was collected. Thirty-three times more revenue came from courts of limited jurisdiction. The total sentencing of LFOs has headed downward from 2005 in Superior courts. But these amounts have increased in municipal and district courts since 2008. While Superior Courts

[7] In Washington, monetary sanctions are assessed at every legal level from juvenile court (status to criminal offenses), civil to district court (misdemeanors). *See* RCW 9.94A.760, RCW 7.68.035 and RCW 43.43.74. The clerk surcharge is an example of a new fee added in 2012. *See* RCW 36.18.020.

[8] Frank Edwards and Alexes Harris, *An Analysis of Legal Financial Obligations in Seattle Municipal Court, 2000-17*, Presentation to the Washington State Supreme Court Annual Symposium on Fines and Fees (June 2018) and Report Prepared for The City of Seattle, Office for Civil Rights (2020) (available at https://www.seattle.gov/Documents/Departments/CivilRights/SMC%20Monetary%20Sanctions%20Report%207.28.2020%20FINAL.pdf.

in Washington State had much higher balance due than the other two court types in the early 2000's, the three courts have roughly the same amount outstanding at 2014 at $50-60 million.

In 2015, this Court decided *State v. Blazina*, 182 Wn.2d 827 (2015). Going forward, each sentencing judge is required to make an individualized inquiry into a defendant's ability to pay before imposing discretionary LFOs. In 2018, the Washington legislature enacted legislation which amended two statutes and now prohibits the imposition of certain LFOs on indigent defendants. *See* Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Tess. (Wash. 2018). In addition, indigent defendants are now permitted to file a motion to remit discretionary LFOs that were imposed prior to the decision in *Blazina*. *See* RCW 10.82.090(2)(a).

The *Blazina* decision is a step forward. But neither *Blazina* nor subsequent legislation offers any relief from mandatory financial penalties, restitution or forfeitures.

3. Monetary Sanctions are Routinely Imposed in the City of Seattle

Cases in Seattle Municipal Court (SMC) have trended downward over this 18-year period between 2000-2017. In 2000, SMC handled over 100,000 total cases, and the caseload total was at a minimum in 2017 at about 40,000 cases with ordered LFOs. Because Seattle's population grew

substantially over this time period, the per capita rate of LFO orders declined even more rapidly, from a peak of about 200 cases with LFOs per 1,000 residents in 2000 to a minimum of about 50 cases with LFOs per 1,000 residents in 2017, about 25 percent of the rate of LFO debt orders per capita in 2000. Note that across this period, the overwhelming majority of SMC cases with LFOs were traffic infractions.[9]

Analysis of the distribution of the SMC LFO caseload across Seattle's population by race/ethnicity using data from cases filed in 2017 shows that for all classes of cases, people of color are ordered LFO debt more frequently than white people in Seattle. In 2017, Black drivers in Seattle were issued 2.6 times more traffic infractions with LFOs per capita than were white drivers. Latino/a drivers were issued 1.7 times more traffic infractions than white drivers. American Indians/Alaska Natives were issued LFOs for criminal non-traffic offenses at a per capita rate 6.7 times higher than the rate for white Seattle residents. Non-traffic infraction LFOs were ordered 3.7 times more frequently for American Indians/Alaska Natives than for whites, and Black Seattleites were issued LFOs for non-traffic infractions at a rate 3.1 times higher than white drivers.

[9] *See FN 8, supra.*

The analysis also shows that Black drivers are far more likely than others to be charged with driving with a license suspended in the third degree (DWLS3) following an SMC LFO. About 2.3 percent of all Black men who receive traffic infraction LFOs in SMC can expect to be charged with DWLS 3, compared to about 0.4 percent of White men. Latino and American Indian/Alaska Native men charged with traffic infractions are more likely than white drivers to be charged with DWLS 3 following an SMC LFO; about 0.8 percent of Latino men and 1 percent of American Indians/Alaska Natives men, on average, will receive a DWLS3 charge in SMC following a traffic infraction at 2000 – 2017 rates.

During the period of analyses, Amici Professors found that Black people in Seattle were sentenced to DWLS3 LFOs at a rate nearly 6 times higher than the rate at which white people in Seattle were sentenced to DWLS3 LFOs. Latino/a residents were sentenced to DWLS3 LFOs at a rate 3.4 times higher than the white sentencing rate. Black and Latino/a Seattle residents were sentenced to LFO debt at higher rates than white Seattle residents for all categories of violations. American Indian/Alaska Native Seattle residents were sentenced to higher levels of debt than white residents for criminal non-traffic, infraction non-traffic, and DWLS3 than were white residents. In sum, the exploration of racial disparities in traffic and non-

traffic infractions illustrate a high degree of racial/ethnic disproportionality in both the case volume and unpaid LFO debt in Seattle Municipal Courts.

B. Fines and Fees Lead to a Series of Cumulative Consequences for People Who are Unable to Pay

There are several legal mechanisms that keep debtors attached to the criminal legal system. Solely because of their poverty status, and their inability to repay all of the financial penalties they were sentenced, poor people – unlike wealthy defendants – experience a very different criminal legal path. And, because of their employment and housing limitations, for many, they will continue on a path of debt for the remainder of their lives. Thus, poor people face a dramatically different type of justice than defendants with financial means. In an eight-state study, including Washington State, researchers interviewed over 500 people who owed court debt.[10] Many interviewed perceived the legal debt as a means for politicians or actors within the criminal legal system to purposefully keep them incarcerated or on court supervision. Regardless of whether the sentence of monetary sanctions is a conscious social control strategy, the punishment of monetary sanctions clearly is a legal mechanism that leads

[10] Sarah Shannon, Beth M. Huebner, Alexes Harris, Karin Martin, Mary Pattillo, Becky Pettit, Bryan Sykes, and Christopher Uggen, *The Broad Scope and Variation of Monetary Sanctions: Evidence from Eight States*, 4(1) UCLA CJLR 269-81 (2020).

to the continual supervision of the poor who are unable to make sufficient or regular payments.

1. Loss of ability to drive

Amici professors' research shows a common concern among those interviewed was over the practice of automatic license suspensions.[11] The suspension of driver's licenses for non-payment on court fines and fees is a regular practice across the states Amici Professors studied for the Multi-State Study of Monetary Sanctions, including Washington State.[12] These policies had severe consequences on the ability for individuals to go to work, bring their children to school and childcare, make appointments, attend court hearings, and go about their daily lives. Many individuals abided by their suspensions, doing their best to manage their inability to travel. Others believed that their needs for transportation were greater than the potential consequences of driving on a suspended license.

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[11] *See* Alexes Harris and Tyler Smith, *Monetary Sanctions as Chronic and Acute Health Stressors: The Emotional and Physical Strain of People Who Owe Court Fines and Fees* (2020) (Under Review). For example, many traffic and DUI convictions in WA result in the automatic suspension of an individual's driver's license. Individuals may not have their license reinstated until all LFOs are paid off. *See* https://www.dol.wa.gov/driverslicense/suspensions.html.

[12] *See FN 8, supra*.

2. Precarious Access to Housing

Pattillo and colleagues[13] find in their work that studies in the growing field of monetary sanctions mention housing instability as a sequela of being sentenced to pay fines and fees, but often place housing alongside other hardships that result from LFOs.[14] Only Jessica Mogk *et al*[15] make the relationship between LFOs and housing outcomes — specifically homelessness — the primary topic of study. In their survey of 101 people experiencing homelessness in Seattle, they found that having criminal justice debt was correlated with longer periods of homelessness. Amici Professors have expanded on that survey and produced the first study to explore how LFOs produce many forms of housing insecurity.

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[13] Mary Pattillo, Erica Banks, Brian Sargent, and Daniel Boches, *Monetary Sanctions and the Housing Churn* (2020) (Under Review).

[14] Alicia Bannon, Mitali Nagrecha, and Rebekah Diller, *Criminal Justice Debt: A Barrier to Re-entry*. New York: Brennan Center for Justice, (2010) (available at www.brennancenter.org/page/-/Fees%20and%20Fines%20FINAL.pdf); Alexes Harris, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*. NY: Russell Sage Foundation (2016); Alexes Harris, Heather Evans, and Katherine Beckett. *Courtesy Stigma and Monetary Sanctions*, 76(2) American Sociological *Review* 1-31 (2011). Highsmith, *Commercialized (In)Justice*, NCLC (2019) (available at https://www.nclc.org/images/pdf/criminal-justice/report-commercialized-injustice.pdf).

[15] Jessica Mogk, Valerie Shmigol, Marvin Futrell, Bert Stover, and Amy Hagopian, *Court-imposed Fines as a feature of the Homelessness-Incarceration Nexus*, 42 Journal of Public Health 107-19 *(2020).*

Patillo et al. explain "how housing instability leads to LFOs is a more difficult process to document, but Amici Professors exploit their wealth of data to forge new hypotheses for this pathway. Being homeless leads directly to financial penalties in jurisdictions where public order infractions receive fine-only citations, and for low-level general crimes that garner a ticket. The homeless men in Stuart's ethnographic study in Los Angeles,[16] for example, received criminal fines for jaywalking, begging, obstructing the sidewalk, littering, and "for flicking . . . cigarette ash into the breeze." *Id.*[17] Beyond homelessness, we show how other forms of housing insecurity — such as living in crowded housing situations with few resources — can also lead to entanglements with the law and result in fines and fees."

In their analysis of interviews with people who owe debt, Patillo et al. present the following example of Sean (all names are pseudonyms), a 43-year-old man from Washington State.

> Interviewer: Okay. How much do you worry about your LFO's?
>
> Respondent: I quit worrying about it. I just accepted being homeless.

---

[16] Forrest Stuart, *Down, Out and Under Arrest: Policing and Everyday Life in Skid Row* (2016).

[17] *See also* Chris Herring, Dilara Yarbrough, and Lisa Marie Alatorre, *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness,* 67 Social Problems 131-49 (2020).

> Interviewer: Yeah?
>
> Respondent: Too poor to make it.
>
> Interviewer: So where do you tend to stay right now?
>
> Respondent: On the street. Like in front of buildings, on the side of buildings. Like I just had court today 'cause I got woken up behind *ampm*. And so they gave me a trespassing charge for sleeping behind *ampm*.
>
> Interviewer: Okay. Does that happen more frequently? Or does that happen often, I guess you could say?
>
> Respondent: Yeah, with everyone yeah. It's illegal to be homeless in [X] county.
>
> Interviewer: It's illegal to be homeless in [X] county?
>
> Respondent: Yeah.
>
> Interviewer: And so you just end up getting all these extra charges on it? Does that add up to more fees and fines and all that?
>
> Respondent: Yeah.
>
> Interviewer: So it keeps building?
>
> Respondent: Yeah.
>
> Interviewer: So can you think of ways of getting out [of debt]? Or is it basically like this is just kind of-
>
> Respondent: Get out of [X] county.

Pattillo and colleagues note that there is no law that explicitly makes being houseless illegal in Washington State. They find "what the law does

say, however, is that it is illegal to trespass. Trespassing "upon the premises of another" is what Sean was charged with for sleeping on the property of an *ampm* convenience store, a simple misdemeanor, punishable by a fine of up to $1,000 and a 90-day jail term.[18] Sean reported that even prior to his most current arrest, he had received fines and fees of $1,000, but that interest for non-payment had increased them to $2,500. Notices about what he owed were sent to his father's house. He was on a payment plan of $50 per month. Sometimes his father paid his LFOs and other times he paid them out of his monthly disability check, which Sean stated, is "supposed to be $750. I get $680 after child support. And then I have to pay another $50 for fines." Sean's LFOs take up 7 percent of his net disability check, which is his only source of income, and is not sufficient to pay for housing. When asked how the debt affected him, Sean answered directly: "I just can't afford to live. Can't afford to live in the first place, being on disability . . . It's affected my ability to pay rent." The circular hardship is obvious. His homelessness gets him fined for trespassing while his LFOs (and low income) keep him from being housed."

[18] See RCW 9A.52.070 for Criminal trespass in the first degree and 9A.52.080 for Criminal trespass in the second degree. On fine amounts, *see* RCW 9A.20.021.

3. Constant Mental Stress and Concern

Harris and Smith analyzed a national dataset provided by the Federal Reserve, and in which individuals were asked to rate their general health. They find that people who have legal debt are more likely to indicate that their health falls into the lower range. The authors find significant differences between people who carry household court related debt from those who do not. Among those households that owe legal debt people work less due to heath concerns, and were less likely to receive mental, dental or follow-up care because of cost. These data illustrate a significant difference between people who owe legal debt and those who not in terms of the types of health care they accessed and medical debt accrued. Using nationally sampled data, and interview data from the eight state study, their findings are suggestive of the ways court debt can lead to differential outcomes and wellness.[19]

C. Monetary Sanction, Including Costs Related to Impoundment, Can be Financially Devastating

The punishment of monetary sanctions including, all related cost points, is a unique punishment option. Fines and fees are similar to

[19] Alexes Harris and Tyler Smith, *Monetary Sanctions as Chronic and Acute Health Stressors: The Emotional and Physical Strain of People Who Owe Court Fines and Fees* (2020) (Under Review).

probation in that they accompany constant court supervision until paid in full. Furthermore, until all court related costs are paid, including those to third party entities, people are unable to move forward with their lives: access housing, transportation, and carry constant stress. However, the unique fiscal hurt associated with monetary sanctions creates an additional and cumulative punishment. Unlike incarceration, for people who are poor, debtors do not have a determinate date by which they will be relieved of this fiscal punishment. To this end, monetary sanctions are very different from incarceration and even probation. The policy directives guiding incarcerative sentences purposefully shifted to discrete determinate sentences to avoid, in part, racial disparities in outcome.[20] In contrast, people serve an indeterminate punishment with monetary sanctions, and because of poverty, many will carry the penal debt until they die. The perpetual nature of legal debt, the uncertainty of when the punishment and control will end, and the constant tradeoff with securing basic living accommodations, such as food, housing and health care, makes monetary sanctions a particularly egregious punishment. The chronic and acute stress

[20] Rodney L. Engen, *Assessing Determinate and Presumptive Sentencing – Making Research Relevant*, 8(2) Criminology and Public Policy 323-337 (2009); Terance D .Miethe and Charles A. Moore, *Socioeconomic Disparities Under Determinate Sentencing Systems; A Comparison of Preguideline and Postguideline Practices in Minnesota*, 23 Criminology 337-63 (1985).

these costs bring is one that differently punishes poor people from people with financial means, and appears to diminish people's abilities to be well.

D. For People Who are Poor, the System of Monetary Sanctions is Excessive When Amounts are Imposed are Not Directly Related to a Person's Ability to Pay

The system of monetary sanctions is also crucial to understanding the processes of social stratification and inequality in the United States. Particularly, when certain racial and ethnic groups are disproportionately processed within the criminal legal system, and as a result, disproportionately carry the burden of criminal legal debt, our work finds that this punishment system is fundamental to expanding racial, ethnic, and economic inequality. Penal debt informs past and current understandings of the sociological "gaps." For example, the gap in wealth attainment between Black, Native American, Latino/a households with white households could be affected by the differential rates by which Black, Native American, and Latino/a individuals make contact with criminal legal systems and carry penal debt. Similar gaps in educational attainment could be the result of the disproportionate rates by which Black, Native American, and Latino/a children have a parent incarcerated, and as a result, their families face high institutional fees, costs and services related to penal debt and mandated punishments that carry financial payments. This financial weight also matters in that penal debt creates cost-prohibitive barriers for

adults to complete and further their own education. Penal debt sheds light on the health gaps found between racial and ethnic groups. Above and beyond the fiscal stress, the constrained opportunities may cause people who are entangled in the criminal legal system to have poorer outcomes than either those without contact, and those who have felony convictions but do not carry the debt burden. Examining the role of penal debt in contemporary society is crucial to fully understand the creation, maintenance, and further bifurcation of these "gaps" that perpetuate racial, ethnic and economic disparities.[21]

E. People Sentenced to Pay Monetary Sanctions Experience them as Excessive

Two considerations of excessiveness include if the punishment and related costs are reasonable given a person's ability to pay and if the punishment is proportionate to the crime. Amici Professors' interviews with people paying their court debt and related costs found that even small

[21] Alexes Harris, Mary Pattillo and Bryan Sykes, *The Costs of Paying Debts to Society: An Eight State Study of Monetary Sanctions* (2020) (Under Review). *See also* Melvin L. Oliver and Thomas M. Shapiro, *Disrupting the Racial Wealth Gap,* 18(1) Contexts 16-21 (2019); Anthony A.Peguero, Sarah M. Ovink, and Yun Ling Li, *Social Bonding to School and Educational Inequality: Race/Ethnicity, Dropping Out, and the Significance of Place*, 59(2) Sociological Perspectives 317-444, (2016) (available at http://www.jstor.org.offcampus.lib.washington.edu/stable/26339115); David R. Williams and Michelle Sternthal, *Understanding Racial-ethnic Disparities in Health: Sociological Contibutions*, 51 Journal of Health and Social Behavior, S15-S27 (2010).

amounts of LFOs were experienced as both outside of their financial means to pay and disproportionate to the crime committed. It is important to calibrate how the dollar amounts of court costs, fines, and fees sound to the people upon whom they are imposed. The median income of the people interviewed was roughly $1,500 per month. Many of these people owed in excess of their monthly income, mostly for nonviolent offenses. When they did pay, they did so by not paying other essential bills and costs. For example, Christine, a 32-year-old woman in Washington State, reported her court debt — which included restitution stemming from a felony and four misdemeanors — as totaling $8,000, not including the interest that continued to accrue. She reported earning $2200 per month, and paid $1250 on the apartment she shared with her sister. This left little to pay her other bills and made it almost impossible to reduce her court debt. "Pretty much I'm barely, if I even am, paying the interest," she lamented. The widespread inability to pay made the punishment disproportionate to their crime and redistributed monies in a regressive fashion.

Monetary sanctions are often imposed on top of jail, prison, probation, community service, and other court-mandated programs. In low-level criminal cases where the retributive function is already served by these other forms of punishment, monetary sanctions add a disproportionately punitive element for poor people who have little means to satisfy this

component of their sentence. Even in more serious cases, monetary sanctions pile on to other punishments. Nathan, a 33-year-old man in the state of Washington, was convicted at age 17 and spent 4 years in a juvenile detention facility. When he was released he still owed $40,000 in restitution and nearly $10,000 in court fines and costs for a fraud case. He has experienced more than a decade of housing instability, including homelessness. He shared: "I have rode around on buses all night long. I have stayed in different shelters. During the summer, I even found it was warm enough, saw a park bench, laid down, slept. So, I mean, I've had a rough go of things paying off this debt." In other words, the monetary sanctions are in excess of the four years of confinement as a young adult, and they keep Nathan in a perpetual state of punishment and poverty.

V. CONCLUSION

For all the reasons outlined above, the system of monetary sanctions, and all related cost points, creates cumulative disadvantage for people who are poor, and disproportionately of color. Research illustrates that these costs impeded many people's abilities to be safe, healthy and free. As such, these costs – imposed on people too poor to pay – are excessive.

Respectfully submitted this 5th day of February, 2021.

/s/ Todd Maybrown
Todd Maybrown, WSBA #18557
Attorney for *Amici* Professors

PROOF OF SERVICE

Sarah Conger swears the following is true under penalty of perjury under the laws of the State of Washington:

On the 5th day of February, 2021, I filed the above document via the Appellate Court E-File Portal through which counsel for all parties will be served.

DATED at Seattle, Washington this 5th day of February, 2021.

/s/ Sarah Conger
Sarah Conger, Legal Assistant

ALLEN, HANSEN, MAYBROWN, OFFENBECHER

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- *Susan Mahoney, Chief Presiding Judge*

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- *Steve Gustaveson, Project/Program Manager IV*

South Seattle Colleges

- *Stephanie Guy*

Neighborhood House Washington

- *Ali Scego*
- *Roland Htwe*

Former Community Work Program Participants

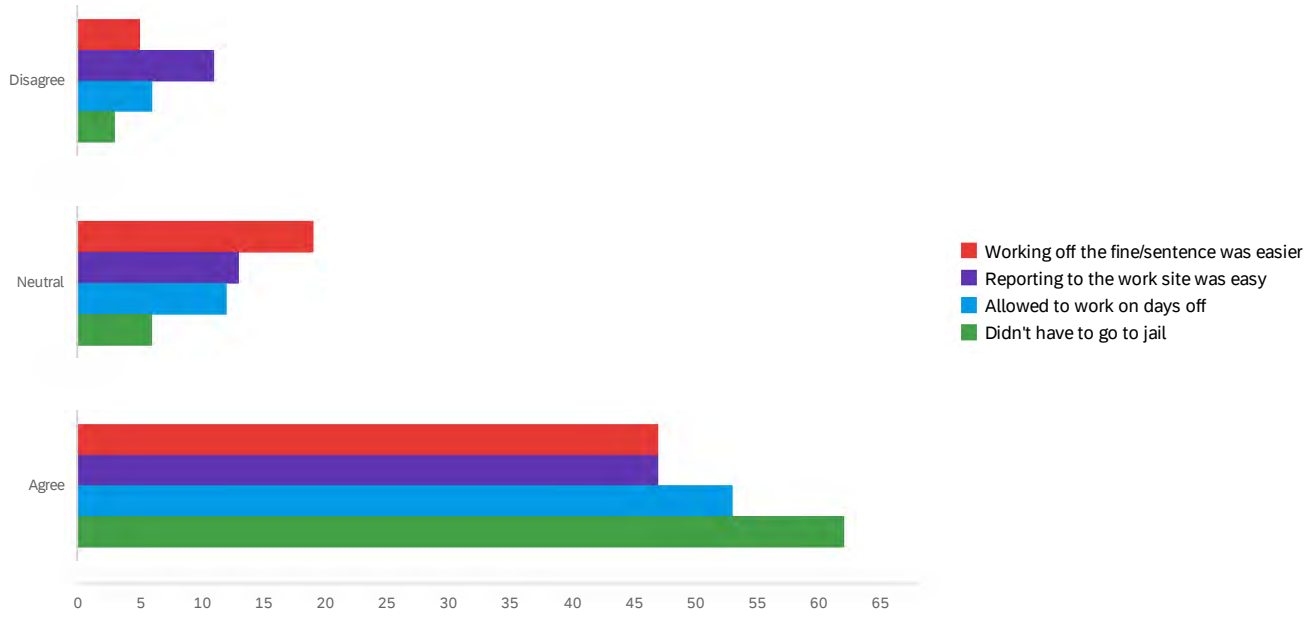
-Various, via survey

Full Report

Appendix E

King County Community Work Program Participant Survey

Q2 - How was the Community Work Program helpful?



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	Working off the fine/sentence was easier	1.00	3.00	2.59	0.62	0.38	71
2	Reporting to the work site was easy	1.00	3.00	2.51	0.75	0.56	71
3	Allowed to work on days off	1.00	3.00	2.66	0.63	0.39	71
4	Didn't have to go to jail	1.00	3.00	2.83	0.47	0.22	71

#	Field	Disagree		Neutral		Agree		Total
1	Working off the fine/sentence was easier	7.04%	5	26.76%	19	66.20%	47	71
2	Reporting to the work site was easy	15.49%	11	18.31%	13	66.20%	47	71
3	Allowed to work on days off	8.45%	6	16.90%	12	74.65%	53	71
4	Didn't have to go to jail	4.23%	3	8.45%	6	87.32%	62	71

Showing rows 1 - 4 of 4

Q3 - Other thoughts about how the program was helpful?

Other thoughts about how the program was helpful?

No more thoughts

make sure you dont want to ever do the crime you did ever again nobody likes to work for free

Better for the community than just sending someone to jail taking up tax payers money with no return to the community. Let's us be able to work off our sentence while still being able to provide for our families instead of just throwing us into a tank that does nothing but take up resources and space that only hinders us from being able to be a productive Mel ever of society.

It gives the chance to keep your dignity

Getting to me other convicted individuals is a positive setting

Great for the community!

This program is an absolute joke. The woman who ran the van both days was unorganized. Her van was disgusting. She tried dumping watered down gasoline next to lake sammamish and I threatened to call hazmat if she did. Wasted HOURS driving around looking for where she was supposed to be. There's a placard in the van that sites an RCW and to not leave van running all day when parked. She left it running all day. An absolute joke. The "regulars" were allowed to be lazy and just sit in the van and also have their cell phones.

When you put the community at risk you should give back to the community to say you are sorry. Money is easy but giving up your time and working makes you reflect.

It really gave me the opportunity to reflect on my problems and see the dangers of doing what I did.

The scheduling flexibility helped for me since I also had a full time job.

good option to have, got to talk with others

It really isn't. It's kind of a joke to be honest. I think it really depends on who you get as your crew leader. Some get work done. Others just drive around and take breaks and hang out and smoke and use phone all day.

The staff was excellent to work for, and i could see that they could be a target of society.

Is this about the work crew program? Before covid? In that case sure it was an option other then jail but the office I was expected to report to was directioly across the street from where I currently had a no contact for. So wtf? I couldnt go, it was a trap if i went i would be in violation 500ft...

very insightful to see concerns of the city in the community cleanup

it was not

Easy to work with program

I was really nervous but everyone was nice and it was a better experience than I expected.

Other thoughts about how the program was helpful?

Program gives you a second chance to correct things and not to repeat same infractions. Program was serious enough for you to understand the impact of ones actions and regret those actions but not extremely harsh as to affect ones future or prospects. Staff was very helpful, approachable, nice and professional which made the program humane.

YOU GOT TO LEARN HOW TO USE TOOLS, YOU MAY HAVE NEVER USED BEFORE.

It was enough to learn I did not want to do it again. Lesson learned.

Talking with other workers to understand how they landed in the workers program

I appreciated the opportunity to provide a benefit to the community as opposed to the expense of incarceration.

It was very organized and was able to get assigned to my groups and all fine

Also shows how much need we have in the community to work on improving areas, reduce trash and make Seattle a place to appreciate vs avoid.

Fucking awful, they sentence you to community service and basically tell you to fuck off after that with little to no information and you have to figure all the shit out on your own, logging your hours is complete bullshit, why cantI screenshot my hours and present them that way, instead I have to drive my ass all the way down to get a bunch of verifications on my hours witch took days because no one was in that was able to do that so I had to wait for an email, on top of that the court waited till the very end of my probation to sentence me which gave me absolutely no tome to get my hours done considering that we are in a FUCKING PANDEMiC and almost every fucking!! Place!!! Is FUCKING!!! Closed!!!! Fuck your program□□□□ □□

It wasnt the easiest work, i got alot of cuts from sticker bushes. Im used to that type of work cause i have helped my friends with landscaping. it was way better then going to jail. Im trying to figure out if i can pay tickets that i cant afford with community service.

I would just say that their was a lot of just sitting in a van at times. We could have done more work.

Honestly every time I cut my grass at my house I think about community work program in a good way. It's a great program.

Saved money when I couldn't afford to pay fine

It has its benifits. I think the way that this country views incarceration is really messed up.

Helped avoid jailtime and clean the community which i didnt mind doing.

Too many limited days

It was like going to work mando it helped me to be motivated and im taken care of a court ordered that i take responsible of overall it was successful

Have participants work in area's that really need it. The park we worked on litter at was almost clean when we got there.

Crew for woman were great

It provides a way to avoid wasting jail resources for people who aren't normally part of the criminal system and are just trying to move past one-time criminal offenses.

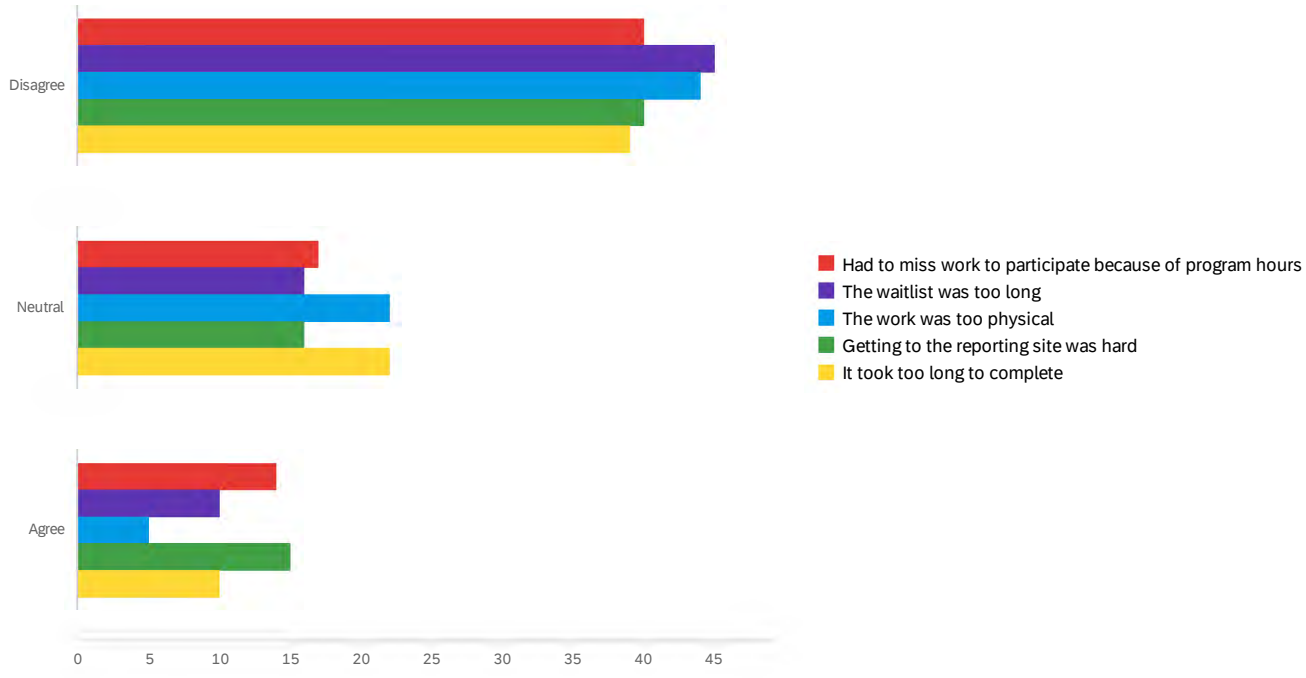
Good alternative to paying a fine.

Other thoughts about how the program was helpful?

What if I only had one day left?

Yes. My case worker Carline was amazing. The staff was great over all.

Q4 - How was the Community Work Program unhelpful?



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	Had to miss work to participate because of program hours	1.00	3.00	1.63	0.79	0.63	71
2	The waitlist was too long	1.00	3.00	1.51	0.73	0.53	71
3	The work was too physical	1.00	3.00	1.45	0.62	0.39	71
4	Getting to the reporting site was hard	1.00	3.00	1.65	0.81	0.65	71
5	It took too long to complete	1.00	3.00	1.59	0.72	0.52	71

#	Field	Disagree		Neutral		Agree		Total
1	Had to miss work to participate because of program hours	56.34%	40	23.94%	17	19.72%	14	71
2	The waitlist was too long	63.38%	45	22.54%	16	14.08%	10	71
3	The work was too physical	61.97%	44	30.99%	22	7.04%	5	71
4	Getting to the reporting site was hard	56.34%	40	22.54%	16	21.13%	15	71
5	It took too long to complete	54.93%	39	30.99%	22	14.08%	10	71

Showing rows 1 - 5 of 5

Q5 - How else could we improve the program?

How else could we improve the program?

As a punishment it works fine, but you are missing an opportunity to get actual work done to help the community.

Cant think of a way

bigger vans for all the people

Shorten the number of days needed to complete for one day of jail.

It would be more impactful to do something with the community. Like work for a food bank or with the homeless.

I don't know

Multiple locations or the ability to have more people on one day would have been helpful. I had to reschedule one day which ended up being pushed out 3 months.

Fire everyone and start over. Take better care of all the equipment the taxpayers bought.This program is an absolute joke. The woman who ran the van both days was unorganized. Her van was disgusting. She tried dumping watered down gasoline next to lake sammamish and I threatened to call hazmat if she did. Wasted HOURS driving around looking for where she was supposed to be. There's a placard in the van that sites an RCW and to not leave van running all day when parked. She left it running all day. An absolute joke. The "regulars" were allowed to be lazy and just sit in the van and also have their cell phones.

When we got to the site the person running the program has many people to keep track of. There was not enough work for all who were there, and one person climbed back into the van and was sleeping. Smaller more manageable groups or have two supervisors so everyone is participating evenly. .

N/A

More clarity in what to expect for the day.

Allow other alternatives like community service work with non profits with more flexible hours and scheduling like food banks etc

Know what’s actually happening out in the field. I personally don’t have a complaint but it really does seem luck of the draw as to whether you have to work or not.

Have someone there to handle dumbasses.

Dont make it a violation to report to something that is going to be required by the court.

The work done was poorly guided, and instead of accomplishing something it felt more like just filling the time until we had to go home- time that could be spent more productively.

having supervisors read conditions of release

Great

Separate men and women. I would rather have less schedule options than work with guys who hit on me throughout the day.

How else could we improve the program?

N/A

Safe and More accessible Parking for participants

It was fine, the staff are laid back

By making it 3 fucking steps to get started instead of a fucking 100

Better tools. They are hard to use very dull and weak

poor pprogram participant hygiene, overcrowded and filthy transportation, assinine rule against allowing participants leave to purchase foodstuffs from merchants, how is it in 2020 anyone is still using 2 cycle power equipment, i.e. leaf blowers and weed whackers is beyond me

Parking

Just more organized and detailed on what is exactly the task at each site is. In the crews I was with some folks worked while others just did nothing and tried to hide.

I would not change anything it works very well and I remember it like yesterday

Have more meetup locations. I lived in Kenmore and had to report to Seattle but then ended up working the days in lake forest park. It would be much easier to report at the site

See above

Better location/ parking/ less strict clock in time. More late or absent forgivness. Its not like it hurts the community if a person is slightly late why discredit the whole day and deny them entry or credit. It benifits no one and wastes even more of our time.

Working through the Covid shutdown was thoughtful and safe for me.

Think of ways that dont impede work and our parenting roles. Maybe have other options other than cleaning. Finding chilcare was incredibly difficult.

Parking sucks in that area, limited days of work hinder people that have jobs

Giving out proper information and introducing themselves

Supervise the people in the program better so they are more productive. I saw lots of slackers.

have a center on the eastside, since most work is done on the eastside

The program seemed like it was on auto-pilot and more of a mandatory adult day care than actually providing any real coordinated service. There was a lot sitting around killing time than actually doing something productive. Staff members spent excessive amounts of time on their phone with family and friends. Workdays were cancelled after making the effort to drive across the county to show up (at least we were given credit). Yes, it’s an alternative for low-level crimes (sitting in a jail cell serves no purpose for this situation other than being punitive), but honestly the program felt like just another of the many bureaucratic check boxes I had complete.

Some of the chaperones were just going through the motions and weren't motivating at all.

coffee

How else could we improve the program?

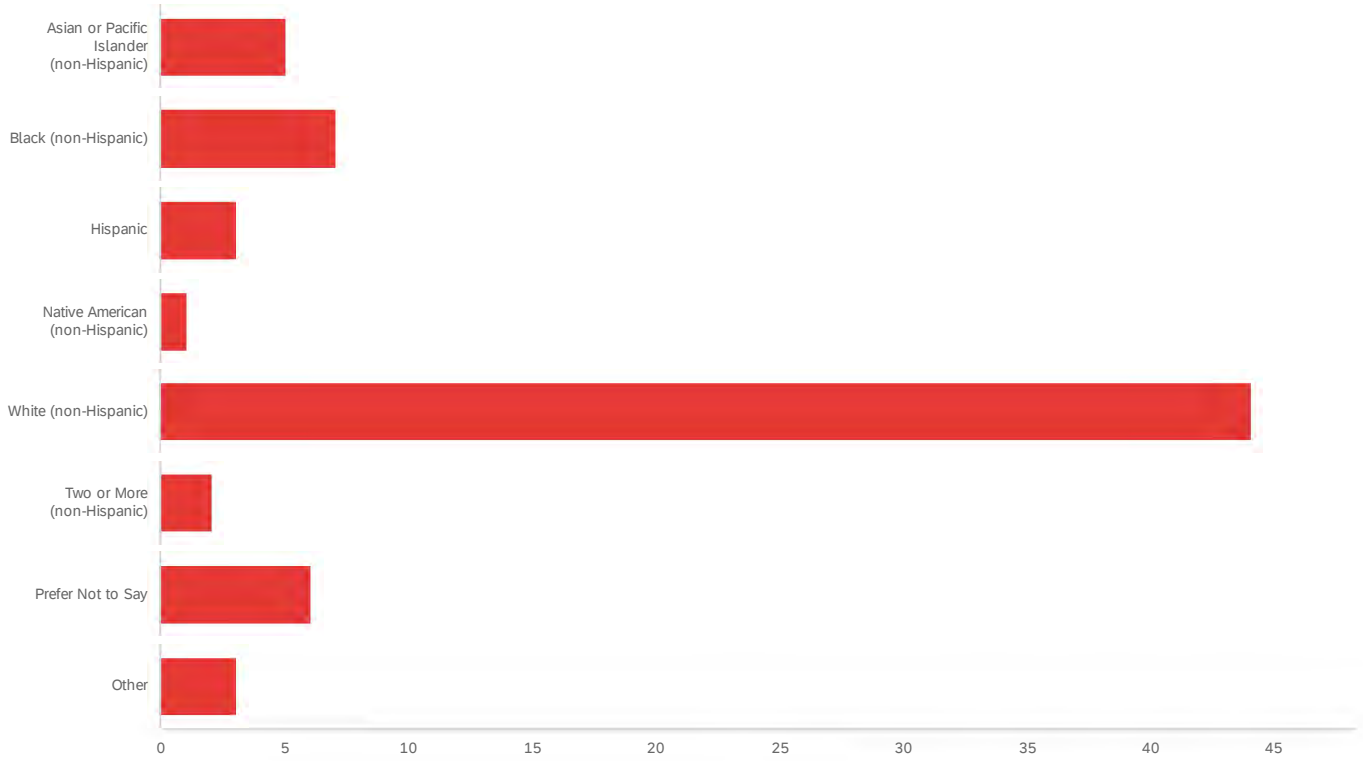
Bring it back

Q6 - Overall, how would you rate your experience with the Community Work Program?

(1=Poor; 5=Great)

#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	1	0.00	5.00	3.85	1.29	1.65	68

Q7 - My racial identity can best be described as:



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	My racial identity can best be described as: - Selected Choice	1.00	8.00	4.65	1.68	2.82	71

#	Field		Choice Count
1	Asian or Pacific Islander (non-Hispanic)	7.04%	5
2	Black (non-Hispanic)	9.86%	7
3	Hispanic	4.23%	3
4	Native American (non-Hispanic)	1.41%	1
5	White (non-Hispanic)	61.97%	44
6	Two or More (non-Hispanic)	2.82%	2
7	Prefer Not to Say	8.45%	6
8	Other	4.23%	3

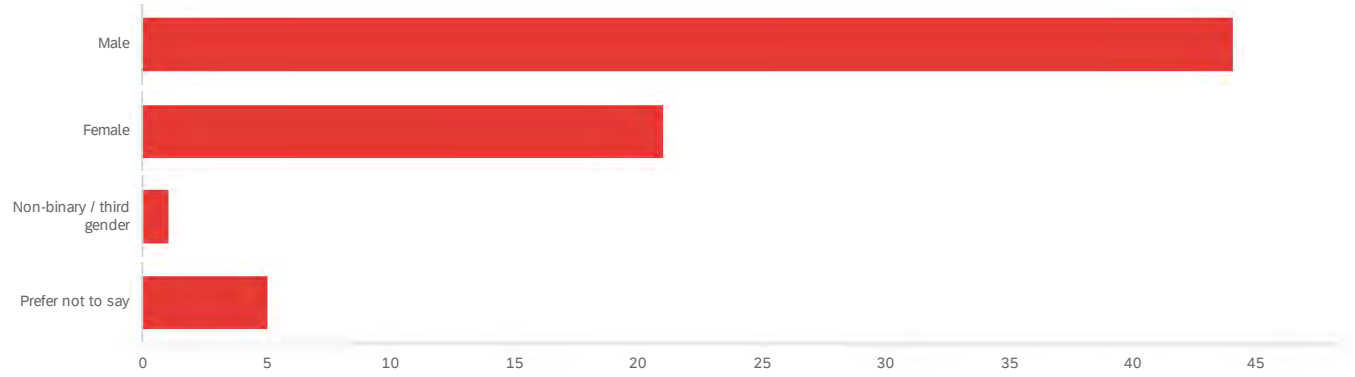
#	Field	Choice Count
		71

Showing rows 1 - 9 of 9

Q6_8_TEXT - Other

Other
Human
Human

Q8 - My gender can best be described as:



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	My gender can best be described as:	1.00	4.00	1.54	0.84	0.70	71

#	Field		Choice Count
1	Male	61.97%	44
2	Female	29.58%	21
3	Non-binary / third gender	1.41%	1
4	Prefer not to say	7.04%	5
			71

Showing rows 1 - 5 of 5

End of Report

UNITED NATIONS
Office on Drugs and Crime

Appendix F

Handbook of basic principles and promising practices on Alternatives to Imprisonment

CRIMINAL JUSTICE HANDBOOK SERIES

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Handbook of basic principles and promising practices on Alternatives to Imprisonment

CRIMINAL JUSTICE HANDBOOK SERIES

UNITED NATIONS
New York, 2007

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The handbook was reviewed at an expert group meeting held at UNODC in Vienna from 31 October to 1 November 2005. UNODC wishes to acknowledge the valuable contributions received from the following experts who participated in that meeting: Alvaro A. Burgos Mata, Yvon Dandurand, Curt T. Griffiths, Nashaat H. Hussein, Kittipong Kittayarak, Tapio Lappi-Sepälä, Benjamin Naimark-Rowse, Adam Stapleton, and Vera Tkachenko. Also contributing throughout the development of the Handbook were Mark Shaw, Ricarda Amberg, Anna Giudice, Claudia Baroni, Bernardo Camara, and Miriam Magala of UNODC. Following the expert group meeting, the handbook was revised by Suzanne Schneider and Sharman Esarey, consultants to UNODC.

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Contents

Introduction

This handbook is one of a series of practical tools developed by UNODC to support countries in the implementation of the rule of law and the development of criminal justice reform. It can be used in a variety of contexts, including as part of UNODC technical assistance and capacity building projects. The handbook introduces the reader to the basic principles central to understanding alternatives to imprisonment as well as descriptions of promising practices implemented throughout the world. A companion *Handbook on Restorative Justice Programmes* is also available from UNODC.

This handbook offers easily accessible information about alternatives to imprisonment at every stage of the criminal justice process; important considerations for the implementation of alternatives, including what various actors must do to ensure its success; and examples of systems that have reduced imprisonment. The handbook has been written for criminal justice officials, non-governmental organizations, and members of the community who are working to reduce over-reliance on imprisonment; to improve the delivery of justice, including rehabilitation and reintegration; and to integrate international human rights-based standards and norms into local policies and practices.

The handbook considers general strategies to reduce the reach of the criminal justice system and thus indirectly avoid the use of imprisonment. It also examines various aspects of alternatives to imprisonment that one may wish to consider when assessing the needs and demands of a country's criminal justice system. Importantly, the handbook focuses

systematically on the implementation of alternatives at the following phases of the criminal justice system:

- Pre-trial;
- Sentencing;
- Early release of sentenced prisoners.

The handbook also highlights strategies to reduce imprisonment in four major groups for whom imprisonment has especially deleterious effects and who can benefit from alternatives at every level:

- Children;
- Drug users;
- The mentally ill;
- Women.

Finally, the handbook presents the critical components that must be considered in developing a strategy for the development and implementation of a comprehensive range of alternatives to imprisonment in order to reduce the prison population, listing not only key factors and elements, but also potential pitfalls and ways to avoid them. The handbook is not intended to serve as a policy prescription for specific sentencing alternatives, but rather, seeks to provide guidance on the implementation of various sentencing alternatives that integrate United Nations standards and norms.

1. Introducing alternatives to imprisonment

1.1 Why consider alternatives to imprisonment?

Prisons are found in every country of the world. Policy-makers and administrators may therefore simply come to regard them as a given and not try actively to find alternatives to them. Yet imprisonment should not be taken for granted as the natural form of punishment. In many countries the use of imprisonment as a form of punishment is relatively recent. It may be alien to local cultural traditions that for millennia have relied on alternative ways of dealing with crime. Further, imprisonment has been shown to be counterproductive in the rehabilitation and reintegration of those charged with minor crimes, as well as for certain vulnerable populations.

Yet, in practice, the overall use of imprisonment is rising throughout the world, while there is little evidence that its increasing use is improving public safety. There are now more than nine million prisoners worldwide and that number is growing.[1] The reality is that the growing numbers of prisoners are leading to often severe overcrowding in prisons. This is resulting in prison conditions that breach United Nations and other standards that require that all prisoners be treated with the respect due to their inherent dignity and value as human beings.

[1] R. Walmsley, *World Prison Population List*, International Centre of Prison Studies, King's College, London, 2005.

There are several important reasons for the primary focus to be upon alternatives that reduce the number of people in prison and for imprisonment to be used only as a last resort:[2]

Imprisonment and human rights

Individual liberty is one of the most fundamental of human rights, recognized in international human rights instruments and national constitutions throughout the world. In order to take that right away, even temporarily, governments have a duty to justify the use of imprisonment as necessary to achieve an important societal objective for which there are no less restrictive means with which the objective can be achieved.

The loss of liberty that results from imprisonment is inevitable but, in practice, imprisonment regularly impinges several other human rights as well. In many countries of the world, prisoners are deprived of basic amenities of life. They are often held in grossly overcrowded conditions, poorly clothed and underfed. They are particularly vulnerable to disease and yet are given poor medical treatment. They find it difficult to keep in contact with their children and other family members. Such conditions may literally place the lives of prisoners at risk.

Increasingly, human rights courts and tribunals have recognized that subjecting prisoners to such conditions denies their human dignity. Such conditions have been held to be inhuman and degrading. All too often, the majority of these prisoners may be low-level offenders, many of whom may be awaiting trial, who could be dealt with using appropriate alternatives instead of being imprisoned. Implementing effective alternatives to imprisonment will reduce overcrowding and make it easier to manage prisons in a way that will allow states to meet their basic obligations to the prisoners in their care.

Imprisonment is expensive

The cost of imprisonment worldwide is hard to calculate, but the best estimates are in the region of US$ 62.5 billion per year using 1997 statistics.[3] Direct costs include building and administering prisons as well as housing, feeding, and caring for prisoners. There are also significant indirect or consequential costs, for imprisonment may affect the wider community in various negative ways. For example, prisons are incubators of diseases such as tuberculosis and AIDS, especially so when they are overcrowded. When prisoners are released, they may contribute to the further spread of such diseases.

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[2]See also Matti Joutsen and Uglješa Zvekic, "Noncustodial sanctions: Comparative Overview" in Uglješa Zvekic (ed.), *Alternatives to Imprisonment in Comparative Perspective*, UNICRI/Nelson-Hall, Chicago, 1994, pp. 1-44.

[3]G. Farrell and K. Clark, *What does the world spend on criminal justice?* (HEUNI Paper No. 20) The European Institute for Crime Prevention and Control affiliated to the United Nations,(Helsinki, 2004).

Targeting prison overcrowding

Penal Reform International estimates nine million people are in prison or detained often in conditions below applicable international human rights standards and which seriously undermine the chances for their productive return to society. Overcrowding often poses public health hazards, undermines the control of violence inside prison, creates a dangerous environment for prison staff and makes it impossible to deliver United Nations-defined minimum standards of detention requiring adequate light, air, decency and privacy.

The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002 calls for action against overcrowding: "Criminal justice agencies should work together more closely to make less use of imprisonment. The prison population can only be reduced by a concerted strategy."

Penal Reform International suggests a ten-point plan to reduce overcrowding: informed public debate, using prison as a last resort throughout all stages of the criminal justice system, increasing prison capacity, diverting minor cases, reducing pre-trial detention, developing alternatives, reducing sentence lengths and ensuring consistent sentencing, developing solutions to keep youth out of prison, treating rather than punishing drug addicts, the mentally disordered and terminally ill offenders and ensuring fairness for all.

Source: Penal Reform International.

The cost of imprisonment

In Brazil:

Average cost of a prisoner:
R$ 800 per month

Average construction cost per prisoner:
R$ 12,000 (medium security facility)
R$ 19,000 (high security facility)

In comparison:

Average cost of a public school student (south-east region):
R$ 75 per month.

Average cost of construction of a house for the poor:
R$ 4,000 to R$ 7,000

Source: Public National Security Plan, National Secretary of Public Security, Ministry of Justice, Brazil, 2002 (English version, Instituto Cidadania)
http://www.mj.gov.br/senasp/biblioteca/documentos/PUBLIC%20SECURITY%20NATIONAL%20PLAN%20ingl%C3%AAs.pdf

Imprisonment is overused

It is essential that policy-makers take a close look at who is being held in prison, why they are there, and for how long they are being detained. Where such data are not immediately available, steps should be taken to ensure that they are regularly reported to policy-makers and to other senior stakeholders in the criminal justice system. Invariably the data will reveal that prisoners are disproportionately drawn from the poorest and most vulnerable groups in the community. Such prisoners may be serving sentences for petty or non-violent offences or may be awaiting trial for unacceptably lengthy periods of time. For them, imprisonment may not be suitable at all. Alternatives to imprisonment offer a variety of strategies for dealing appropriately with such persons that do not involve imprisonment at all. Alternatives should therefore be the primary point of departure in order to avoid over-reliance on imprisonment.

Alternatives may be more effective

Most of the objectives of imprisonment can be met more effectively in other ways.

Several social objectives are claimed for imprisonment. It keeps persons suspected of having committed a crime under secure control until a court determines their culpability. Equally importantly, it punishes convicted offenders by depriving them of their liberty after they have been convicted of an offence, keeps them from committing further crime while they are in prison, and, in theory, allows them to be rehabilitated during their period of imprisonment. Finally, imprisonment may be thought to be acceptable for detaining people who are not suspected or convicted of having committed a crime, but whose detention is justified for some other reason.

Given that imprisonment inevitably infringes upon at least some human rights and that it is expensive, is it nevertheless such an effective way of achieving these objectives that its use can be justified? The reality is that most of the objectives of imprisonment can be met more effectively in other ways. Alternatives may both infringe less on the human rights of persons who would otherwise be detained and may be less expensive. Measured against the standards of human rights protection and expense, the argument against imprisonment, except as a last resort, is very powerful.

What are the special justifications advanced for different forms of imprisonment?

In the case of *unconvicted prisoners,* the loss of liberty requires particular justification, as they must be presumed to be innocent of the charges until proven otherwise. The question of effectiveness in this regard must be linked closely to why the detention is regarded as necessary. If there is reason to believe that the suspect will flee to avoid standing trial, for example, the question that must be asked is whether this could be prevented by other, less costly means that would not deprive the person of as

much liberty as imprisonment. If the justification for imprisonment is the concern that a suspect might intimidate potential witnesses, the same question should be asked, though the effective alternative may be a different one to that employed to ensure appearance in court.

Moreover, imprisonment of persons who are awaiting trial may bring with it disadvantages for the criminal justice system as a whole. Preparation of a defence becomes more difficult when the accused is detained awaiting trial. Difficulty in gaining access to defence counsel and other resources to prepare for trial may cause delays and undermine the efficiency of the administration of justice.

The vast majority of prisoners will return to the community, many without the skills to reintegrate into society in a law-abiding manner.

In the case of *sentenced prisoners,* the issue of effectiveness is complicated by the multiple objectives that the sentence of imprisonment is designed to achieve. If the primary objective is to attempt to ensure that offenders desist from future crime, there is no evidence that imprisonment does that more effectively than community-based alternative punishments. On the contrary, studies on the comparative impact of different forms of punishment on recidivism suggest that imprisonment makes it hard for offenders to adjust to life on the outside after release and may contribute to their re-offending. Using imprisonment to incapacitate offenders works only to the extent that while they are serving their sentences, they are not re-offending in the community. However, the vast majority of prisoners will return to the community, many without the skills to reintegrate into society in a law-abiding manner. Offenders are incapacitated while serving their sentences, but on release are more likely to commit further crime than those who are not imprisoned as part of their sentence. Thus, relying on sentences of imprisonment to prevent criminal re-offending is not an effective strategy in the long term.

1.2 What is to be done?

One of the challenges facing authorities who are seeking to develop the use of alternatives to imprisonment as a way of reducing the prison population is ensuring that, conceptually, alternatives should not be drawn too narrowly. Alternatives are an essential part of all levels and stages of the criminal justice system.

How this handbook will help

This handbook provides concrete help to authorities looking for guidance on the best practices in using alternatives throughout the criminal justice system to reduce imprisonment. The handbook:

- Considers general strategies to reduce the reach of the criminal justice system and thus indirectly avoid the use of imprisonment and

examines different aspects of the issue that one may wish to consider when assessing the needs and demands of a country's criminal justice system (chapter 2);

- Focuses systematically on the implementation of alternatives at all phases of the criminal justice system: the pre-trial phase (chapter 3); the sentencing phase (chapter 4); and the phase at which early release of sentenced prisoners may be considered (chapter 5);
- Highlights strategies to reduce imprisonment in four major groups: children, drug users, the mentally ill and women, for whom imprisonment has especially deleterious effects. They can benefit from alternatives at every level (See the box below for an example of a country reducing imprisonment for drug addicts through the use of alternatives.) (chapter 6);
- Presents the critical components that must be considered in developing a strategy for the development and implementation of a comprehensive range of alternatives to imprisonment in order to reduce the prison population, listing not only key factors and elements, but also the potential pitfalls and ways to avoid them (chapter 7).

Alternatives for drug addicts cut prison numbers

Until a comprehensive reform initiative in 2002, Thailand relied heavily on imprisonment as a means of criminal sanction. By May 2002, some 260,000 inmates, more than double the total capacity, were housed in Thai prisons. Of these, two thirds had been convicted of drug charges and the majority of these inmates were also drug addicts. Of those suspected or accused of drug offences, nine per cent were held awaiting investigation; 14 per cent were held waiting trial; and 12 per cent held pending appeal. Statistics showed that 13 per cent of those convicted of drug offences received terms of less than one year, while 46 per cent were sentenced to from one to five years. With the implementation of successful drug addicts' pre-trial diversion and early release programmes involving strong community participation; the increasing and innovative uses of probation and community-based treatment programmes; and restorative justice initiatives, the prison population has been reduced dramatically. As of August 2005, there were approximately 160,000 inmates, with the population continuing to decline.

Source: For more information, see, e.g., Kittipong Kittayarak, Diversion Programs for Drug Addicts, Restorative Justice and New Community-based Treatment Measures in Thailand, a paper submitted to the nineteenth International Conference of the International Society for the Reform of Criminal Law held at Edinburgh, Scotland, 26-30 June 2005 (http://www.isrcl.org/Papers/2005/kittayarak.pdf). See also the website of the Department of Corrections at www.correction.go.th.

1.3 Who should develop the strategy to alternatives to imprisonment?

A particular challenge is to ensure that there is a coherent strategy to develop alternatives to imprisonment. Legislators, judicial officers, lawyers, and administrators all have a role to play. They must work together. There is no point in pressing courts, for example, to use alternatives to prison sentences if there is no law allowing such alternatives to be imposed and no administrative structure to implement them.

Political leadership is essential; alternatives to imprisonment cannot be left only to the "experts". Non-governmental organizations can help ensure that these issues are kept on the political agenda.

Community involvement is equally important. There are many ways in which members of the community can assist in implementing community-based alternatives to imprisonment without putting the rights of offenders at risk. Involving members of the community has the additional advantage that they experience the benefits of keeping people out of prison wherever possible and become more supportive of alternatives to imprisonment generally.

This handbook helps clarify what can be expected of these different actors at each level.

1.4 Potential challenges

Alternatives to imprisonment, though comparatively inexpensive and efficient, may themselves treat offenders in inhuman and degrading ways and would therefore be fundamentally unacceptable.[4] Others may not inherently infringe human dignity but may still be unacceptable when implemented inappropriately. The alternatives may be problematic not only for offenders. They may not, for example, pay sufficient attention to the concerns of victims of crime or to the legitimate interests of others in society. To help avoid these potential pitfalls, this handbook points out the trouble spots at every level.

A second danger is that initiatives adopted as alternatives to imprisonment may result not in fewer people being held in prison but in additional measures against suspects and offenders who would not otherwise have been subject to the control of the criminal justice system at all. (This is sometimes referred to as "widening the net".) The handbook emphasizes

[4]Dirk van Zyl Smit, "Legal standards and the limits of community sanctions" (1993), 1 *European Journal of Crime, Criminal Law and Criminal Justice*, pp. 309-331.

the importance of guarding against increasing social control in this way. Programmes that are designed to reduce prison populations must be carefully targeted to ensure that they have the intended effect and avoid unintended widening of the net of social control.

1.5 The role of the United Nations

Given that imprisonment is a restriction, if not an infringement, of fundamental human rights of the prisoner, it is not surprising that that major United Nations treaties limit carefully the circumstances under which imprisonment is justified. The International Covenant on Civil and Political Rights (ICCPR) is perhaps the most important of these multilateral treaties. Other multilateral instruments, such as the United Nations Convention on the Rights of the Child, contain stricter limitations applicable to specific categories of potential prisoners.

Since the mid-1950s, the United Nations has developed and promoted standards and norms to encourage the development of criminal justice systems that meet fundamental human rights standards. These standards and norms represent a collective vision of how to structure a criminal justice system. Although non-binding, they have helped to significantly promote more effective and criminal justice systems and action. Nations use these standards and norms to provide the framework for and to foster in-depth assessments that may lead to needed reforms. They have also helped countries to develop sub-regional and regional strategies. Globally and internationally, they delineate "best practices" and assist countries to adapt them to their specific needs.

The earliest of these, the United Nations Standard Minimum Rules for the Treatment of Prisoners,[5] deals only with imprisonment. While imprisonment has remained an important aspect of the standards and norms, the range of instruments has increased to cover all aspects of the criminal justice system and crime prevention. Today, the standards and norms cover a wide variety of issues such as juvenile justice, the treatment of offenders, international cooperation, good governance, victims' protection and violence against women.

Of particular importance, as far as alternatives to imprisonment are concerned, are the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), which were adopted in 1986.[6] These Rules have as one of their fundamental aims the reduction of the use of imprisonment.[7] The specific proposals that the Tokyo Rules make

[5]E.S.C. Resolution 663C(XXIV) of 31 July 1957 U.N. Doc. E/3048 (1957) and 2076(LXII)(1957).
[6]United Nations Doc. A/RES/45/110.
[7]Rule 1.5.

for alternative, non-custodial measures form the basis for a reductionist criminal justice policy. The development of non-custodial measures goes together with a call on States to "rationalize criminal justice policies, taking into account the observance of human nights, the requirements of social justice and the rehabilitation needs of the offender".[8] At the same time the fundamental aims of the Rules recognize that States have considerable flexibility in deciding how to implement the Rules.[9] They emphasize that States should "endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims and the concern of society for public safety and crime prevention".[10] (For more on the Tokyo Rules, see the box below.)

The Tokyo Rules

The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) were first discussed at the Seventh Congress on Crime Prevention and Criminal Justice and were later adopted by the General Assembly (resolution 45/110 of 14 December 1990).

The Rules present a set of recommendations that take into account the views of legal scholars, experts in the field and practitioners. They emphasize that imprisonment should be considered a last resort and encourage the promotion of non-custodial measures with due regard to an equilibrium between the rights of individual offenders, the rights of the victims and the concern of society. The Rules set forth a wide range of non-custodial measures at various stages of criminal procedures. They also contain rules on implementation of non-custodial measures, staff recruitment and training, involvement of the public and of volunteers, research, planning, policy formulation and evaluation, thus providing a comprehensive set of rules to enhance alternative measures to imprisonment.

The Tokyo Rules are not the only United Nations instruments that are directly applicable to alternatives to imprisonment. Others include:

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[11]
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters[12]

[8]Ibid.
[9]Rule 1.3.
[10]Rule 1.4.
[11]United Nations. Doc. A/RES/40/34.
[12]Adopted by the United Nations Economic and Social Council on 24 July 2002, United Nations Doc. E/2002/99.

In specialist areas, considerable attention has been given to alternatives to imprisonment for:

- Juveniles: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules);[13]
- Drug users: the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations;[14]
- The mentally ill: the United Nations Principles for the Protection of Persons with Mental Illness;[15] and
- Women: the Seventh United Nations Conference on the Prevention of Crime and the Treatment of Offenders. All of these instruments are considered in more detail in chapter 6.

In addition, the United Nations has published practical guides. The *Criminal Justice Assessment Toolkit*, for example, contains a tool on alternatives called *Alternatives to Incarceration* as well as the cross-cutting issues tool, *Juvenile Justice.* There are also handbooks, such as the *Handbook on Victims*, that deal in passing with the issue of alternatives to imprisonment.

This handbook is designed to build on all these United Nations sources, as well as regional and international best practices, in order to provide a basis for technical assistance on how best to introduce and sustain alternatives to imprisonment.

[13]United Nations Doc. A/RES/40/33.
[14]United Nations Doc. A/RES/S-20/3.
[15]Principle 7.1 of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. General Assembly Resolution of 17 December 1991, United Nations Doc. A/RES/46/119.

2. Limiting the criminal justice system's reach

2.1 Decriminalization

The first question is: do particular types of conduct need to fall within the scope of the criminal justice system at all?

Since criminal justice systems are the main consumers of prison resources throughout the world, the first question to ask when tackling the issue of imprisonment is whether particular forms of conduct must fall within the scope of the criminal justice system. Not all socially undesirable conduct needs to be classified as a crime. Decriminalization is the process of changing the law so that conduct that has been defined as a crime is no longer a criminal act.

Various societies have decriminalized vagrancy in whole or in part, significantly reducing rates of imprisonment. Even less-known offences, such as the illicit brewing of liquor, in some countries, may produce a disproportionate number of prisoners. In such cases, decriminalizing the behaviour and dealing with it outside the criminal law does not produce a negative impact on public safety.

Authorities must also take steps to ensure that decriminalization does not result in continued incarceration by an indirect route. Even where conduct is completely decriminalized, there is a risk that officials may still arrest those who are "guilty" of it before handing them over to welfare or medical authorities.

The box below highlights an example of a potential pitfall of decriminalization:

Unintended consequences of decriminalization

Various countries have decriminalized public drunkenness in recent years. This should mean that drunks who once would have been detained pending prosecution are now referred to welfare agencies instead.

Australia decided that indigenous people were grossly over-represented in the prison population and that the system should address this by decriminalizing public drunkenness, a crime for which members of this group were often detained. However, the number of detentions related to public drunkenness increased after the decriminalization. Why? Before handing those found drunk in public over to a welfare agency, authorities now arrested them more freely than in the past before because they did not have to prepare for prosecutions.*

*R. Sarre, *An Overview of the Theory of Diversion: Notes for Correctional Policy Makers,* paper presented at the Best Practice Interventions in Corrections for Indigenous People Conference convened by the Australian Institute of Criminology Adelaide, 13-15 October 1999.

2.2 Diversion

Under diversion strategies, authorities focus on dealing in other ways with people who could be processed through the criminal justice system. In practice, diversion already happens as a matter of course, without recourse to specific strategies. Criminal justice systems typically process only a small proportion of the criminal law offences committed in any country. If countries investigated, prosecuted, tried and convicted all offenders, the various parts of the system, including the prisons, would soon be unable to cope with the numbers. As a result, police and prosecutors, who introduce offenders into the system, have to exercise a degree of discretion in deciding whom to take action against and whom to ignore.

The key question in all criminal justice systems is how to structure this discretion. Members of police services need to have clear instruction on when they can themselves issue warnings and take no further action, when they may be able to divert qualifying offenders to alternative programmes without referring the case to the prosecuting authorities, and when they must refer alleged offences to prosecuting authorities. Similarly, prosecutors need clear guidelines. Both police and prosecutors need to consider the views of victims of the alleged offences, although victims have no veto over state action in the criminal justice sphere.

Strategies of restorative justice, the subject of a separate United Nations handbook, can play a crucial part in decisions about diversion. Where existing mechanisms allow for dispute settlement by restorative means, they may also encourage the use of alternatives to imprisonment. The use

of mediation and alternative dispute resolution in meetings with offenders, victims and community members to deal with matters that would otherwise be subject to criminal sanctions has the potential to divert cases that might otherwise have resulted in imprisonment both before trial and after conviction.

Community-based mediation diverts cases

The legal system of Bangladesh is extremely formal, complex, urban-based, time consuming and financially draining. As a result, many Bangladeshis, particularly the poor, illiterate and disadvantaged living in rural areas, have had difficulty enforcing their rights through the formal justice system. Where conflicts arise and no means exist to resolve them within the community, even relatively minor issues may escalate into disputes involving criminal behaviour.

To improve the situation, the Madaripur Legal Aid Association turned to a traditional system of mediation and dispute resolution in rural Bangladesh. In this system, disputants, community members and village elders gathered to mediate conflicts. The Association agreed to revitalize and reform the system, which had fallen into disrepute, based on the principles of fairness, equality, and non-discrimination.

Donor and support agencies collaboratively trained 1,500 mediation committee members in 1999-2000. To ensure that mediation committees observe international human rights standards and maintain a high level of professionalism in mediating disputes, the Association facilitates several training sessions each year.

In 2001-2002, the Association handled 7,175 applications for mediation. Of these, 4,711, or 66 per cent, were resolved amicably by mediation, 26 per cent were dropped or remained pending at year's end and eight per cent were referred for litigation. The successful mediations dealt with such issues as marriage and divorce, dowry, land ownership and financial disputes.

Source: Alternative Dispute Resolution: Community-based mediation as an auxiliary to formal justice in Bangladesh: the Madaripur Model of Mediation (MMM). Penal Reform International, 2003.

The problem of determining which crimes to investigate and whom to prosecute is particularly acute in states where a new democratically elected government has replaced a repressive regime, members of which may have committed a wide range of serious crimes with impunity. Some of these crimes may represent grave offences against international human rights law, which all states have a duty to prosecute. On the other hand, it may be beyond the powers of the incoming government to investigate all the offences that its predecessors committed.

One solution is to have a truth commission investigate past abuses in general terms. In some instances such commissions have been combined with prospective conditional amnesties, which can be granted even to offenders who have not been convicted of any crime. Such offenders are required, however, to make a full and public disclosure of their crimes in order to qualify for an amnesty. The amnesty means that they will not be prosecuted. However, the disclosure means that crimes that they committed do not go unrecognized, as would be the case if immunity from prosecution were to be granted without requiring any response from those benefiting.

Conditional amnesties of this kind are a radical form of diversion. They should not be confused with blanket amnesties that are not supported by international instruments.[16] While not uncontroversial, they offer a compromise solution that can be used in a period following regime change.

2.3 Who should act?

The involvement of the following individuals and groups is essential:

Legislators must be willing to introduce legislation to the law to decriminalize certain forms of conduct.

Public advocacy groups and **non-governmental organizations** may bring public interest litigation in appropriate cases, helping trigger legislative reform of existing criminal codes. Such groups can be effective in driving change because they represent both the human rights interests of those whose conduct has been criminalized as well as the greater community's interests in the improvement of the criminal justice system.

Legal drafters and **law reform commissions** must ensure unnecessary criminal provisions are not added to general legislation. National law reform commissions should also keep criminal codes under review and draw the attention of the political authorities to criminal provisions against forms of conduct than can be controlled just as or more effectively in other ways. In such cases, the legislature should repeal such criminal provisions and develop enabling legislation for alternative measures.

Police and the **prosecuting authorities** should take the lead in diverting suspects out of the criminal justice system. Where the diversion is linked to mediation or even full restorative justice processes, a separate administrative structure is needed to facilitate these processes, provided either by the state or by non-governmental organizations partnering with criminal justice agencies.

[16] 2005/81.

3. Pre-trial, pre-conviction and pre-sentencing processes

3.1 General

Despite decriminalization and diversion strategies, some persons accused of crimes will be formally charged and prosecuted. Authorities must decide whether to detain those accused prior to and during their trials. Rule 6.1 of the Tokyo Rules clearly states the relevant principle:

> "*Pre-trial detention shall be used as a means of last resort in criminal proceedings,* with due regard for the investigation of the alleged offence and for the protection of society and the victim."[17]

The detention of persons who are presumed innocent is a particularly severe infringement of the right to liberty. The question of what justifies such detention is very important. While Rule 6.1 is somewhat vague in this regard and its qualifications incomplete, it is reinforced by the International Covenant on Civil and Political Rights *(*ICCPR*)*, which provides guidance for those involved in a criminal process but who have not yet been convicted or sentenced. Article 9.3 of the ICCPR provides that:

> "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."

[17]Rule 6.1. Emphasis added. There is a variation in state practice in this area. In some states prisoners are not regarded as sentenced prisoners until all avenues of appeal have been exhausted. In others they are treated as sentenced prisoners once a sentence has been imposed. For the purpose of this chapter, all prisoners who are not treated as sentenced prisoners are regarded as being in a form of "pre-trial" detention.

Using pre-trial detention as a preliminary form of punishment is never acceptable.

In addition, Article 14.3 of the ICCPR stipulates that those tried on a criminal charge are entitled to a trial without undue delay. Requiring a speedy trial minimizes the period of pre-trial detention. In addition, accused persons may only be detained before trial where there is reasonable suspicion that they have committed an offence and where the authorities have substantial reasons to believe that, if released, they would abscond or commit a serious offence or interfere with the course of justice. The criminal justice system should resort to pre-trial detention only when alternative measures are unable to address the concerns that justify the use of such detention.

Decisions about alternatives to pre-trial detention should be made at as early a stage as possible. When the decision is to keep a person in pre-trial detention, the detainee must be able to appeal the decision to a court or to another independent competent authority.[18]

Authorities must also regularly review the initial decision to detain. This is important for two reasons. First, the conditions that initially made detention necessary may change and may make it possible to use an alternative measure that will ensure that the accused person appears in court when required.

Second, the longer the unjustified delay in bringing a detainee to trial, the stronger such a detainee's claim for release from detention and even for dismissal of the criminal charges against him or her. The decision to detain an accused person awaiting trial is essentially a matter of balancing interests. The suspect has a right to liberty, but the combination of circumstances described above may mean that the administration of justice might require its temporary sacrifice. The longer the suspect is detained, the greater the sacrifice of that fundamental right. In applying constitutional or statutory guarantees of fundamental rights, including freedom and speedy trial, a reviewing body may well decide that continued detention is no longer justified and order a detainee's release or that the case be dismissed in its entirety.

In many countries, unacceptably large numbers of prisoners continue to await trial and sentence inside prison. A highly effective way to reduce their numbers is to ensure that their right to a speedy trial, which is guaranteed in various international instruments, is observed in practice. How is this best achieved?

Countries may need to review trial procedures to make the system function more efficiently. The early disclosure of the prosecution case, for example, may eliminate many delays.

[18] Rule 6.2.

Speedy trials depend on inter-agency cooperation. Police and the prosecuting services must communicate at the earliest possible stage of the criminal process. In systems that have investigating judges, they, too, need to become involved at that earliest possible stage. Administrative liaison can achieve a great deal, but countries may also need to amend the rules of criminal procedure to eliminate bottlenecks.

Finally, judicial control of the criminal justice process allows the judiciary to ensure the right to a speedy trial by applying procedural rules strictly. Postponements of cases for further investigation or long delays in bringing them to trial should be the rare exceptions when the suspect or accused person is detained in custody.

3.2 Alternatives to pre-trial detention

The focus up to this point has been avoiding unnecessary pre-trial detention without necessarily putting anything in its place. In many instances, however, avoiding pre-trial detention requires that alternative measures replace it. Such measures ensure that accused persons appear in court and refrain from any activity that would undermine the judicial process. The alternative measure chosen must achieve the desired effect with the minimum interference with the liberty of the suspect or accused person, whose innocence must be presumed at this stage.

Those deciding whether to impose or continue pre-trial detention must have a range of alternatives at their disposal. Tokyo Rule 6.2 mentions the need for alternatives to pre-trial detention but neither the Rules nor the official Commentary explains what such alternatives might be.

Possible alternatives include releasing an accused person and ordering such a person to do one or more of the following:

- to appear in court on a specified day or as ordered to by the court in the future;
- to refrain from:

  interfering with the course of justice,

  engaging in particular conduct,

  leaving or going to specified places or districts, or

  approaching or meeting specified persons;
- to remain at a specific address;
- to report on a daily or periodic basis to a court, the police, or other authority;
- to surrender passports or other identification papers;
- to accept supervision by an agency appointed by the court;

- to submit to electronic monitoring; or
- to pledge financial or other forms of property as security to assure attendance at trial or conduct pending trial.

3.3 Considerations in implementing alternatives to pre-trial detention

Alternatives to pre-trial detention do restrict the liberty of the accused person to a greater or lesser extent. This burden increases when authorities impose multiple alternatives simultaneously. Those deciding must carefully weigh the advantages and disadvantages of each measure to find the most appropriate and least restrictive form of intervention to serve as an effective alternative to imprisonment.

In cases where a person is known in the community, has a job, a family to support, and is a first offender, authorities should consider unconditional bail. In all cases where the offence is not serious, unconditional release should be an option. Under unconditional release, sometimes known as personal recognizance, the accused promises to appear in court as ordered (and, in some jurisdictions, to obey all laws). Sometimes a monetary amount may be set by the court that would be paid only if the court determines that the accused has forfeited what is known in some jurisdictions as an "unsecured personal bond" by failing to appear in court or committing a new offence while in the community pending trial. In other cases, pre-trial release may be predicated upon additional requirements. Courts may require the accused, a relative or a friend to provide security in the form of cash or property, a measure designed to ensure that the accused has a financial stake in fulfilling the conditions imposed regarding court appearance and behaving in other specified ways. This form of bail affords an immediate sanction if the accused fails to obey the conditions set for releasing him from pre-trial detention: the bail money or property is forfeited to the state.

In many countries, this security takes the form of monetary *bail,* or money that the accused pays to a court as a guarantee that he or she will conform to the conditions set for pre-trial release. Variations on this are possible. For example, the accused may not necessarily have to pay the money over directly to the court (or in some instances to the police), but rather provide a so-called bail bond or surety that guarantees that he, or someone acting on his behalf, will pay the money if called upon to do so.

Authorities should confirm that the accused person is able to meet the requirements that are set. If not, it is likely that the accused person will return to pre-trial detention. The following should be considered when evaluating the various requirements that might be imposed:

- A requirement to appear in court as ordered may appear on its face a minimal requirement. Even so authorities should ensure that required court appearances are not excessive in number and that the scheduled hearings are meaningful in that they move a case toward completion. Long delays in finalizing cases are unacceptable even when the accused is not in pre-trial detention.
- While common law countries in particular make widespread use of monetary bail as a precondition for release, it can be argued that the measure unfairly discriminates against the poor. Well-to-do accused persons are better able to post bail than the poor. Courts can help minimize this potential unfairness by setting realistically proportionate bail amounts to the accused person's means, where bail is considered necessary to ensure the appearance of the accused for trial. In practice, however, courts tend to set the amount of bail with the seriousness of the offence in mind, so that those facing a long term of imprisonment may receive a higher bail requirement than they are able to meet financially. The result is that a court may decide that an accused person should be released subject to the posting of a bail, but in practice that person remains in jail, unable to meet the stipulated bail, even where the amount may seem modest but exceeds the accused person's means. This undermines the court's finding that, in principle, the accused person is not someone who needs to be kept in prison pending trial.
- Orders restricting certain activities of the accused may effectively counter specific threats posed by the accused person in the community. However, they may also hinder the accused person's legitimate activities. An order to refrain from certain forms of conduct or to stay away from a specific location or district, may, for example, make it difficult or impossible for the person to work while awaiting trial. Authorities should avoid such restrictions whenever possible or tailor such restrictions as narrowly as possible. If necessary, they should search for a way to compensate for the loss of the ability to earn a living.
- A requirement to surrender identity documents such as passports is an effective tool to prevent the flight of an accused person. Such a requirement may cause unintended consequences. Authorities should consider whether the accused needs the documents to work, withdraw money, or interact with the state bureaucracy. In some countries, courts may order that the defence counsel for the accused take possession of such documents, with leave to allow their appropriate use.
- Direct supervision in the community by a court-appointed agency gives the authorities considerable control over the accused person, but it is an intrusive alternative that greatly limits freedom and privacy. Direct supervision is also expensive, as the agency that performs it has to provide a resource intensive service.

- Electronic monitoring serves as an additional means of surveillance that can monitor compliance with other measures. It can determine, for example, whether a person is obeying an order to remain at a specific address or to keep away from a specific district. It is, however, relatively intrusive, requires considerable technological sophistication to implement, and can be subject to legal challenges as to its proper functioning in the event of data associated with violations being used as the basis of revocation of pre-trial release.
- Finally, the collision of long trial delays with a lack of public understanding of pre-trial release and of the presumption of innocence prior to trial as fundamental rights may produce, among developing countries and elsewhere, the misapprehension that an accused has "gotten away" with the crime and will go unpunished. This has unfortunately led to some in the community to take justice into their own hands when the accused has been released pre-trial—sometimes with fatal results. In addition to the prompt and meaningful resolution of pending criminal cases, public education regarding pre-trial release and the presumption of innocence is essential to promote safety in the community.

Pre-trial release in Latin America

Some Latin American countries allow for the release of accused persons on their own recognizance. Although this measure may be available in theory, conditional release secured by cash or other property is used far more often. As a result, pre-trial prisoners unable to meet the terms required for their release make up a large proportion, sometimes even an absolute majority, of all prisoners held. Such a population can be reduced by careful examination of individual cases to determine who might qualify for personal recognizance pending trial.* Empirical research in Costa Rica suggests that to employ this measure successfully, courts need ready access to comprehensive information about the accused, set regular court dates, and maintain close and regular contact with the accused and, possibly, with their relatives.**

*Elias Carranza, Nicholas J. O. Liverpool and Luis Rodriguez-Manzanera, "Alternatives to Imprisonment in Latin America and the Caribbean" in Zvekic (ed.) op. cit., pp. 384-438.

**Elias Carranza, Mario Houwed and Luis Paulino Mora "Release on Personal Recognizance in Costa Rica: An experimental Research Study" in Zvekic (ed.) op. cit., pp. 439-462.

3.4 Infrastructure requirements for alternatives to pre-trial detention

The advantages and disadvantages of various alternatives to pre-trial detention are often debated in the abstract, as if the deciding authority

could choose freely among various options. But for alternatives to function properly, the state must first create the appropriate framework. For some alternatives, the state needs only a formal legal authorization that allows their use; in other cases, it must set up a more elaborate infrastructure.

For a limited number of alternatives to pre-trial detention, a legislative framework is all that is needed. With that in place, an authority can release an accused person pending trial on the basis of a pledge that he or she will appear before a court. Similarly, no supervisory mechanisms are needed to impose requirements that the accused person not interfere with the course of justice, not engage in particular conduct, not leave or enter specified places or districts, not meet specified persons or remain at a specific address.

In most cases, however, the authority that makes the decision to release a person into the community will want to ensure that there are mechanisms in place to assure compliance with the conditions set. These mechanisms also help reassure and protect victims of crime. Each of the following conditions for release needs some development of infrastructure:

- Reporting to a public authority requires that the authority—the police or the court, for example—is accessible at reasonable times to the accused person and that it has in place an administrative structure that is capable of recording such reporting reliably.
- Surrendering identity documents also requires a careful bureaucracy that can ensure that such documents are safely kept and returned to the accused when the rationale for retaining them is no longer supported by the circumstances.
- Direct supervision requires that there be an entity that can conduct such supervision.
- Electronic monitoring requires a considerable investment in technology and the infrastructure to support it.
- Provision of monetary security requires sophisticated decision-making to determine the appropriate level of security as well as a bureaucracy capable of receiving and safeguarding monetary payments.

3.5 Who should act?

The involvement of the following individuals and groups is essential:

Law enforcement officials typically have the first contact with the suspects. They have a particular duty to keep any detention as short as possible. By conducting investigations speedily, they can ensure that the time for which suspects and persons awaiting trial are incarcerated in kept to a minimum.

Prosecuting authorities also have an important role in ensuring speedy trials and thus minimizing pre-trial detention. They act as the

link between the police and the courts, which puts them in a crucial position to speed up the criminal process and to suggest or urge, where appropriate, the use of alternatives to pre-trial detention.

Defence lawyers have the obligation to advocate vigorously on behalf of their clients and to assert their clients' rights, including pre-trial release and prompt resolution of the investigation and any resulting charges against them. Where fully qualified defence lawyers are not readily available to represent criminal suspects and the accused, paralegals may perform this function.

The judiciary must foster recognition of the right of accused persons to the presumption of innocence; that pre-trial detention should be the exception rather than the norm; and where detention is ordered, that the status of detained defendants and suspects must be reviewed; and finally that the conduct of criminal trials and related proceedings be expeditious, as required by law.

Administrators have a crucial role to play in creating both an infrastructure that makes it possible to implement suitable alternatives to pre-trial detention and a case management system that provides sufficient resources for the timely and meaningful resolution of criminal cases.

4. Sentencing and alternative punishments

4.1 Sentencing

Key questions at sentencing:

Is imprisonment absolutely necessary?

What minimum imprisonment period will suffice?

The sentencing of convicted offenders constitutes the most deliberate and frequent use of imprisonment. The key guiding principle to be used, if imprisonment is to be reduced, is that of parsimony, that is, the imposition of imprisonment as sparingly as possible, both less often and for shorter periods. A careful examination of each case is necessary to determine whether a prison sentence is required and, where imprisonment is considered to be necessary, to impose the minimum period of imprisonment that meets the objectives of sentencing.

The focus should not be only upon changing the practices of the judiciary in sentencing, however. Many criminal systems operate within a legal framework that imposes mandatory minimum terms of imprisonment for certain offences without further consideration of the facts of a case. As a first step in reducing the use of imprisonment, reformers should review the legal framework for sentencing. Not only should judges be encouraged to consider alternatives to imprisonment, they must have the legal authority to exercise discretion in sentencing and the ability to consider alternatives under the law. Specific legislative reforms may also reduce the number of prisoners. For example, a legislative requirement to take into consideration at sentencing the time an offender spent in pre-trial detention might promote shorter overall imprisonment. The box below details a practical example of revising legislation.

Legislating the use of alternatives

A working group on alternatives to imprisonment in Kazakhstan, facilitated by Penal Reform International, brought together representatives from all relevant governmental departments and non-governmental organizations to formulate suggestions to amend criminal legislation. The group's recommendations exerted significant influence on a new law that took effect on 21 December 2002, which increased the use of alternatives to imprisonment, rationalized sentencing policy, and relaxed the requirements toward gaining early conditional release, among other measures.

The prison service, recognizing the need for public support for penal reform, to be successful, conducted a massive public awareness campaign on the harmful effects of imprisonment and the benefits of alternatives.

The reform reduced the prison population and increased use of non-custodial sentences. Just as notably, during the period of decreasing use of imprisonment (since 2002), the crime rate also steadily decreased with the rate in 2005 lower than the crime rate in 2000.

The legislative basis for alternatives and other measures seeking to reduce the prison population should lead at least to a stabilization of the prison population in coming years, a significant achievement when prison population figures are rising in many countries of the world.

Parsimonious use of imprisonment can be achieved when courts impose non-custodial sentences. Such alternatives will first be discussed in detail below, followed by a discussion focusing on the potential role such alternatives have on the sentencing process. It is important to note that non-custodial sentences should serve as *alternatives* to imprisonment, rather than as *additional* penalties imposed on people who would not have been sentenced to imprisonment in the first place. This principle is clearly stated in the Tokyo Rules: "Non-custodial measures should be used in accordance with the principle of minimum intervention."[19]

"Non-custodial measures should be used in accordance with the principle of minimum intervention."

—Tokyo Rules

4.2 Possible alternatives to sentences of imprisonment

Alternatives to imprisonment, like imprisonment and other forms of punishment, may not be cruel, inhuman, or degrading. Even if they are not inherently so, alternatives may violate human rights standards and norms if used inappropriately or improperly. Moreover, no matter what the

[19]Rule 2.6.

motivation for the imposition of a particular alternative may be, it should be recognized that the offender receiving it will experience it as punitive.

What is an acceptable punitive element for an alternative to a sentence of imprisonment? A penal philosopher has suggested that community sanctions, which make up an important part of such alternatives, should "be of a kind that can be endured with self possession by a person of reasonable fortitude".[20] As a general test, this is a sound point of departure. It excludes corporal punishment, for example, because it directly attacks the offender's health and/or well-being. It would also rule out sanctions that, while they pose no threat to the physical integrity of offenders, would nevertheless humiliate them. The Tokyo Rules require that "[t]he dignity of the offender subject to non-custodial measures shall be protected at all times."[21] This Rule is complemented by a further provision protecting the right to privacy of both the offender and his family in the application of non-custodial measures.[22]

Imprisonment has an obvious punitive element: the loss of liberty. The punitive element of alternative sanctions may not be so easily identifiable, all the more so if the alternative sanction itself is not clearly defined by the legal framework. Where a court imposes a general sentence of community service, but delegates to another entity the extent and conditions of that service, the sentence is both undefined and unpredictable, undermining basic rule of law principles. The Tokyo Rules recognize the danger of such arbitrary sentencing and require, in peremptory terms: "The introduction, definition and application of non-custodial measures shall be prescribed by law."[23] The rule limits the power of courts to create and impose what are known as bespoke sentences, that is, unique non-custodial punishments that do not derive from an established penal framework.

The legal definition of sentencing alternatives also helps avoid excesses in otherwise acceptable sentences. Where the law provides for some form of community work as a non-custodial punishment, it should also require the court to determine total hours to be worked, and where an appropriate protocol (one that complies with human rights standards and norms) has not been approved by the judiciary, limit the maximum number of hours per day and week a person under such sentence may be required to work. The court should also stipulate precisely and communicate clearly the conditions that individual offenders must meet.[24] Like other alternative sanctions, community service also requires the formal consent of the offender on whom it is being imposed.

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[20]A. von Hirsch, "The Ethics of Community-Based Sanctions" (1990) 36, *Crime and Delinquency*, pp. 163-173.
[21]Rule 3.9.
[22]Rule 3.11.
[23]Rule 3.1.
[24]Rules 12.1 and 12.2.

The Tokyo Rules list a wide range of dispositions other than imprisonment for the sentencing stage and which, if clearly defined and properly implemented, have an acceptable punitive element:

(a) Verbal sanctions, such as admonition, reprimand, and warning;

(b) Conditional discharge;

(c) Status penalties;

(d) Economic sanctions and monetary penalties, such as fines and day-fines;

(e) Confiscation or an expropriation order;

(f) Restitution to the victim or a compensation order;

(g) Suspended or deferred sentence;

(h) Probation and judicial supervision;

(i) A community service order;

(j) Referral to an attendance centre;

(k) House arrest;

(l) Any other mode of non-institutional treatment;

(m) Some combination of the measures listed above.[25]

The Tokyo Rules list alternative sentencing dispositions, but they neither describe the substance of these dispositions nor do they elaborate on the administrative structures needed to implement them as realistic sentencing alternatives to imprisonment, not the least of which is a decision-making process that is supported by key stakeholders in the criminal justice system as well as the public in general. Alternative dispositions to sentencing will be discussed in greater detail in section 4.3 below, with a discussion in section 4.4, which follows, of the general umbrella of administrative support and infrastructure structure needed to implement sentencing alternatives so that they are readily available and accessible.

4.3 Specific non-custodial sentences

Because the terminology used to describe non-custodial sentences varies greatly across the world, the terminology in this handbook is consistent with that used in the Tokyo Rules in describing the substance of alternative sentencing dispositions and their administrative requirements. However, other terms, and indeed other non-custodial sentences, may also be acceptable if their punitive elements meet the standards of human dignity and the rule of law discussed above.

[25] Rule 8.2.

These include:

(a) **Verbal sanctions**, such as admonitions, reprimands, warnings or unconditional discharges accompanied by a formal or informal verbal sanction are some of the mildest responses that a court may upon a finding of guilt or legal culpability. Where the appropriate legal frameworks are in place, such a sentencing disposition may be imposed without further ado. Although they are formally sanctions, they have the effect in practice of ensuring that the criminal justice system is not further involved in the matter. They require no administrative infrastructure.

(b) **Conditional discharges** are also easy to impose. However, authorities may need to set up some mechanism in the community to ensure that the conditions that a court may set when discharging the offender without imposing a further penalty are met. If authorities task the existing police force with this responsibility, they should recognize the additional administrative burden it entails.

(c) **Status penalties** deny the offender specified rights in the community. Such a penalty might, for example, prevent someone convicted of fraud from holding a position of trust as a lawyer or director of a company. It might prevent a doctor convicted of medical malpractice from continuing to practice medicine. Status penalties should relate the loss of status to the offence and not impose restrictions on offenders that are unconnected to the offence committed.

On their face, status penalties are also less expensive alternatives to imprisonment. The court can impose them easily if it has the relevant information about the status of the offender. Status penalties, however, can have hidden costs. They may prevent the offender from earning a livelihood, and, if the offender's skills are scarce, the whole community may suffer from his/her professional ban.

(d) **Economic penalties** are among the most effective alternatives in keeping many offenders out of prison. Fines also appear relatively simple to use, but the imposition of fines and their implementation require some administrative support.

Some believe that setting fixed fines for specified offences avoids difficult questions about what the amount of the fine should be in a particular case. However, a fixed fine hits the poor much more harshly than the rich. Courts should therefore reserve fixed penalties for relatively petty offences for which imprisonment would not normally be considered or where it may be assumed that all offenders have some income from which to pay the fines. Speeding fines—where the amount of the fine is linked directly to the extent to which the speed limit was exceeded—are examples of the latter.

In other cases, the requirements of equality demand that an attempt should be made to ensure that the fine is also related to the income of the offender so that the fine should have an equal "penal bite". Often the court can manage this by inquiring into the income of the offender and then adjusting the fine upwards or downwards as warranted. This method can, however, only provide a rough equivalence between offenders of differing financial means. The box below gives an example of how to deal with this issue.

Striving for equality in fines: day fines

A more sophisticated way of relating fines to the ability of offenders to pay them is by means of a system of day fines (sometimes also known as "unit fines"). In this form of fining, the seriousness of the offence is first expressed in terms of a number of "days" or "units". The average daily income of the offender or the average daily surplus of the offender is then determined. The actual fine is calculated by multiplying the number of days (units) by the average daily income or average daily surplus of the offender.*

*Hans Thornstedt, "The Day-Fine System in Sweden", 1975 Criminal Law Review, pp. 307-312; Gary M. Friedman "The West German Day-Fine System: A Possibility for the United States" (1983), 50 *University of Chicago Law Review*, pp. 281-304; Tapio Lappi-Seppälä "Public Perceptions of the Dayfine System; An evaluation of the 1999 dayfine reform" *JFT* 3-4/2004.

The administration of a system of fines requires a relatively complex bureaucracy attached to the court system. The bureaucracy must provide for the receipts from fines as well as transferring payment to the state. Inadequate monitoring provides fertile ground for corruption. Further, for a day-fine system to function fairly, the bureaucracy must have an accurate way to determine the income of offenders. Where a state has a tax system that generates reliable data about individual incomes and where the law allows such data to be used by the courts, this might not be a problem. However, in many countries, accurate information of personal income is difficult to obtain without considerable effort and expense.

Fine defaulters should not face automatic imprisonment if they fail to pay their fines. Authorities should pay attention to other possible solutions to deal with defaulters. For example, they may work in the community, or the state may provide them with work, so that they can pay their fines with the proceeds of their labour.

(e) **A confiscation or an expropriation order** is mentioned by the Tokyo Rules as a type of sentencing case disposition. However, many jurisdictions do not regard this as a sentence to be imposed by a court at all, but merely as a consequence that follows a crime. In some jurisdictions, the confiscation and forfeiture mechanisms may reside beyond the jurisdiction of the criminal courts. The statutory framework, wherever it resides, may direct that authorities confiscate the proceeds of crime and, upon liquidation of non-monetary assets, forfeit the money to the state. To implement confiscation orders fairly, however, courts need detailed evidence showing that particular monies found in the possession of an offender are the product of the crime rather than legitimate income from other sources.

Expropriation orders must be linked closely to the crime or they can become problematic. In fact, expropriation is more comparable to a fine paid in kind rather than in money. For an expropriation order to be proportionate to the crime, a careful investigation must be made in the same manner as for a day fine (above). The attendant effort in assessing the material position of the offender is similar, but the state has the added burden of dealing with the goods or property that might be expropriated from the offender.

(f) **Restitution to the victim or a compensation order** both overlap to some extent with a fine in that, from the perspective of the offender, they are economic penalties. They are also subject to similar challenges in determining an amount proportionate to the ability of the offender to pay. The box below provides a practical example of compensation.

Tradition favours compensation

Research in Nigeria and other African countries shows that there is a long tradition of paying compensation to victims in lieu of other punishment for even the most serious of crimes. Often such compensation is simply paid outside the formal legal process and the criminal law is not invoked at all. In part, this happens because the criminal law is not flexible enough to recognize the need for compensation. Additional provision for such orders is required, which would also help avoid situations where offenders privately buy their way out of publicly taking responsibility for their crimes.*

*Adedokun A. Adeyemi, "Personal Reparation in Africa: Nigeria and Gambia" in Zvekic (ed.) op. cit. pp. 53-66.

From a wider perspective, restitution and compensation fulfil other important criminal justice goals. Experts recognize provisions for victims as an important objective of criminal justice. Of particular significance in this regard is the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which provides that, where appropriate, offenders should make restitution to victims, their families or dependants.[26] Such restitution, the Declaration explains, "should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of victimization, the provision of services and the restoration of rights".[27]

The Tokyo Rules do not define compensation orders; however, compensation orders can be taken to refer to victim restitution as well, in particular in a sentencing order in which a payment is required to be made to a state-run victim compensation fund. In this manner, the victim is guaranteed redress without having to wait for the offender to complete payment of the order.

The *Handbook on Justice for Victims* elaborates on the general value of restitution and compensation, pointing out that this is a socially constructive sentence that also offers "the greatest possible scope for rehabilitation".[28]

From the specific perspective of alternatives to imprisonment, the court must pay careful attention to the assessment of victim loss when imposing restitution, whether directly or by formal compensation order to which the state must contribute. It can do this in various ways. The *Handbook on Justice for Victims* suggests the following:

> In some jurisdictions, the prosecutor negotiates directly with the defence counsel, after substantiating all losses with the victim. In other cases, assessments of the loss may be made solely by the probation officer as part of the pre- [trial] *sic* sentencing investigation. No matter how the process occurs, the victim is generally required to present receipts or other evidence to substantiate the actual losses suffered. In Canada, the Criminal Code provides that restitution can be ordered as an additional sentence to cover "readily ascertainable" losses.[29]

[26]Article 8 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
[27]Article 8.
[28]*Handbook on Justice for Victims*, p. 47.
[29]Ibid.

In jurisdictions that follow a French or German model, the victim, represented as *parti civile* or *Nebenkläger* by counsel, assists the court at the trial. Such a representative should help provide the information on which such restitution or compensation can be based, but the court bears the ultimate responsibility in this regard. If compensation claims can be considered at the time of the criminal trial, this will bring victims relief and means that they do not have to bring a subsequent civil action. In some jurisdictions, however, there are legal obstacles to adopting this practice.

The implementation of restitution to the victim may require a degree of supervision by the state. In practice, it may be difficult for the court that orders such restitution to supervise its payment, and it may need the involvement of the probation service (see below) or a similar bureaucracy involved in the administration of sentences to put it into practice. Alternatively, a court may be able to rely on the community to ensure that the compensation is actually made as ordered. Care must be taken however, to ensure that the authority given to a community to enforce compensation is strictly limited.

A victim compensation scheme, particularly if it is paid by the state in the first instance, requires a major investment in administrative infrastructure. The form that this takes will vary according to the social welfare or criminal justice systems in place when such a scheme is introduced. It may be possible, for example, to make compensation payments through an existing system. Other countries have found it more effective to set up a separate victim compensation fund with its own administration. Such a fund can then consolidate payments from fines, compensation paid by offenders, and other sources, using them to guarantee compensation to victims. One drawback is that offenders are very often so poor that the amount they are able to contribute is negligible. The difficulty in finding the additional resources to provide adequate compensation and to pay for the administration of the fund may make it an unrealistic proposition in developing societies.

(g) **Suspended or deferred sentences** are dispositions that a court can impose without much difficulty. The suspended sentence, where a sentence of imprisonment is pronounced, but its implementation suspended for a period on a condition or conditions set by the court, is ostensibly an attractive alternative to imprisonment. The threat of imprisonment is made (and heard by the public) and, it is hoped, has a deterrent effect, but ideally the sentence will not need to be imposed because the conditions have been complied with by the person under sentence.

Even suspended and deferred sentences create some extra administrative obligations at the implementation stage. If the conditions of suspension or deferral are not met, an administrative structure must ensure that the suspended or deferred sentence is imposed, including the scheduling of a hearing to determine whether the terms have been violated. While this may seem relatively simple, a degree of sophistication is required in the procedures when sentence is imposed for a subsequent offence, if that is also the basis for the revocation of the deferral or suspension of sentence. The administrative structure must take steps to ensure that, if necessary, earlier suspended sentences are brought to the attention of the court or the earlier process of sentencing that may have been deferred is revived. Suspended sentences should, however, not be triggered automatically; the authorities should decide in each instance whether imposition of the sentence is appropriate.

If the conditions of suspension or deferral are more complex, an entire bureaucracy may be required to ensure that infringement of such conditions is brought to the attention of the court so that it can decide whether to bring the suspended sentence into effect or impose a sentence where it has earlier deferred from doing so.

(h) **Probation and judicial supervision** are not defined in the Tokyo Rules or even discussed in the official commentary on the Rules. Perhaps this is not surprising as there are different understandings of probation. In many jurisdictions, the function of probation historically was almost exclusively one of welfare. Placing an offender "on probation" meant only that a social welfare service would pay particular attention to an offender's welfare and other needs. While this is still the case in many countries, in others, the probation service has evolved into an agency that is primarily responsible for ensuring that offenders carry out orders of the court about what they must or must not do to remain in the community instead of being imprisoned. This "intensive probation", as it is sometimes called,[30] may form part of the probation order and may help protect victims of crime against offenders. Alternatively, the probation order may relate to other sentencing dispositions that are implemented in the community. For the purposes of this handbook, we will characterize the probation service as the entity of government that provides information to the criminal justice system, particularly on sentencing, and/or monitors whether offenders meet the requirements of community sentences imposed upon them, while assisting them with problems they might face.

[30]See N. Morris and M. Tonry, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System,* Oxford University Press, New York, 1990.

Whatever the emphasis in probation, a court cannot order probation without the existence of an appropriate service infrastructure. The probation service must provide the court with the information it needs. These may be known as the social inquiry reports to which the Tokyo Rules refer.[31] Such reports describe the background of offenders, detail the circumstances of their lives relevant to understanding why they committed their offences, and recommend sentencing alternatives, such as treatment for substance abuse, which may help the offender change the behaviour that triggers offending. They must also include information about how the offender is likely to cope in the community as well as with any conditions or restrictions the court might consider imposing.

Most importantly, the probation service must be able to implement the probation order of the court by providing the service support and supervision of other conditions of probation that the court imposes. This may include the implementation of other community dispositions such as restitution to a victim, conditionally suspended and deferred sentences, and even community service orders and house arrest. The Tokyo Rules refer to judicial supervision in the same context as probation. While the courts cannot carry out supervision directly, they may be able to involve community organizations in this function.

(i) **A community service order** requires an offender to do unpaid work for a specified number of hours or to perform a specific task. As its name suggests, the work should provide a service to the community. Before imposing such an order, the court needs reliable information that such work is available under appropriate supervision. The box entitled "Using community service orders, to address drunk driving" provides a practical example of the use of community service orders.

Community service requires close supervision to verify that the offender does the work required and that he or she is neither exploited nor forced to work beyond what is required or under unacceptable conditions. In many jurisdictions, the probation services or officials performing an equivalent function bear primary responsibility for ensuring that these requirements are met.

The importance of public participation in the implementation of non-custodial measures is emphasized in the Tokyo Rules[32] and community service orders can be a good place to contemplate such participation. Members of the community can provide work opportunities for offenders; they should not, however, perform enforcement or disciplinary functions. For

[31]Rule 7.1 and section 4.4 below.
[32]Rule 17.

example, they should not make the final decision on whether an offender has failed to perform community service as ordered by the court, as this may well determine whether further steps are taken against him. The box entitled "Helping local institutions through community service" illustrates a case study of a member of the public helping develop a work opportunity that serves the community.

Using community service orders to address drunk driving

The Thai Department of Probation, in close cooperation with the courts, conducted a successful campaign against drunk driving, long a major cause of road accidents. In this initiative, drunk drivers, who would normally have received three-month imprisonment terms, were instead given suspended sentences and put on probation with the requirement that they perform 24 hours of community service. The authorities selected community service activities designed to sensitize drunk drivers to the kinds of injuries they might cause themselves or others. They included assisting the victims of car accidents, working in hospitals, and volunteering for road accident emergency rescue units.

The Department worked hard to get the campaign's message to the public. In addition to TV advertisements and short film contests, some celebrities who had been arrested for drunk driving and placed on probation participated in the campaign to reduce the number of deaths and injuries during the holidays. Such efforts produced additional dividends. Recently, the Bangkok-based ABAC poll found that 91 per cent of the public polled agreed with the idea that drunk drivers should receive community service orders. When asked whether they had heard of the Department of Probation, once the least known organization in the criminal justice system, 83 per cent of those polled answered in the affirmative, a steep rise from the 48 per cent logged in an October 2000 survey.

Note: For more information, see, for example, "Hospital duty for drink drivers" in *The Nation*, March 11, 2005; "Drunk driving: Bars ought to lay on cars" in *The Nation*, April 10, 2005 (http://www.nationmultimedia.com); "Tough campaign launched against drink driving" in the *Bangkok Post*, December 17, 2004 (http://www.bangkokpost.com).

Helping local institutions through community service

In the early 1990s, Zimbabwean authorities working to reduce both prison overcrowding as well as to contain burgeoning costs associated with maintaining the growing population of prisoners conducted a survey to obtain a profile of the prison population. The survey showed that some 60 per cent of prisoners were serving sentences of six months or less and fully 80 per cent were serving sentences of 12 months or less, and many were serving sentences despite having been given the option to pay fines. It became clear to the authorities that most of these prisoners were not serious offenders, that most should not have been sent to prison, and that Zimbabwe was in need of alternative sentencing options, particularly for first and youthful offenders. The Ministry of Justice drafted legislation that was passed in 1992 amending the criminal procedure code to allow, among other alternatives, the courts to order community service as a sentencing option.

Even though Zimbabwe had no probation service, the community service scheme was implemented via a hierarchy of a national, provincial and district committees, on an entirely voluntary basis, in 1994, with funding provided for a limited number of staff. Critical to the success of programme was the involvement of the local community at the district committee level, where representatives of local institutions provide community service opportunities for offenders. In the absence of probation officers, these placement institutions, such as clinics, schools or hospitals, request the court send offenders on community service orders to perform work at the institution. Offenders are sentenced to a perform a number of community services hours by magistrates based upon a protocol that ranges from 35 to a maximum of 420 hours, providing a rough equivalent of what might have been a prison sentence of one to 12 months. Community service officers monitor the implementation of the order and communicate breaches to the court. Approximately 91 per cent of the 18,000 probationers sentenced to community service in the first four years of the programme successfully completed their service, with initial results showing a much lower rate of recidivism. The scheme costs $20 per person per month, one-fifth to one-sixth of the estimated cost of imprisoning an offender for one month.

Due to its success and, in part, also because the community service scheme reflects a more traditional approach to justice of community service and reparation, several other countries in Africa and beyond have adopted the Zimbabwe model of community service.*

*See "The Zimbabwe Community Service Scheme", Justice Paddington Garwe, Text of Speech, Beyond Prisons Symposium – Kingston, Ontario, Canada, March, 1998 on Canada Correctional Service website: http://www.csc-scc.gc.ca/text/forum/bprisons/speeches/10_e.shtml; "Community Service in Practice", Penal Reform International, 1997, on Governance and Social Development Resource Centre website: http://www.gsdrc.org/docs/open/SSAJ27.pdf

(j) **Referral to an attendance centre**, a facility where the offender spends the day, returning home in the evenings. Attendance centres, also known as day reporting centres, may provide a centralized location for a host of therapeutic interventions. Many offenders have considerable need for therapy or treatment, with drug addiction the predominant need in many jurisdictions. (See the section on drug courts, chapter 6, section 6.3, "Special categories, drug offenders".) Other programmes such a centre could offer a range from anger management to skills training. Offenders are more likely to respond positively to such programmes when they are conducted under the relative freedom of attendance centres in communities as compared to a prison setting.

Use of attendance centres by the courts assumes foremost that a jurisdiction has invested in an infrastructure of attendance centres that offer the range of programmes determined to be necessary. Judges need to be regularly informed and updated as to what such centres offer, whether programmes have vacancies, are at capacity, or have waiting lists, as well as what may be available in a particular community. Finally, in order to require a particular offender to attend a centre, judges need particular information about the offender and his or her needs, which may require a medical and/or psychological assessment in addition to an investigation of the offender's social history. (See social inquiry report below.)

(k) **House arrest** is a relatively harsh sentence, but it is still less intrusive than imprisonment. Homes of offenders vary enormously. In some countries, many live on the streets, others in grossly overcrowded conditions. If house arrest were imposed for the full 24 hours of the day, it would place an intolerable burden on the offender's many housemates. It would also mean that an offender's home would become his prison, except that, unlike prison, he would be responsible for meeting his own basic needs. Various means of electronic monitoring discussed below could further increase the oppressiveness of house arrest.

To avoid excesses, the court can restrict the hours of house arrest. This could, for example, allow an offender to remain gainfully employed during the day but leave him confined to his house at night. With a supply of good information, the court should be able to distinguish between cases where house arrest may be imposed without too severe a disruption to the lives of other inhabitants of the same house. It can also tailor enforcement measures accordingly.

(l) **Other modes of non-institutional treatment** are allowed by the Tokyo Rules. They give states the flexibility to develop new forms of non-institutional treatment or to reinvigorate customary alternatives that may have fallen into disuse. Such alternatives must not infringe on fundamental human rights standards. They should also be articulated clearly in law.

(m) **Some combination of the measures listed above** is a common sense indication that a court is not limited to a single disposition. In practice, courts often set a list of conditions that may refer to more than one category. The important principle is that the overall punitive effect should not be excessive.

4.4 Infrastructure requirements for sentencing alternatives

For courts to be able to select from a range of alternatives, they need a considerable amount of information. To this end, the Tokyo Rules provide specifically for "social inquiry reports"[33] to be made available to the courts.[34] The Rules contemplate formal official reports from a "competent authorized official or agency". Rule 7 stipulates that such reports should contain both information about the offender and "recommendations that are relevant to the sentencing procedure". In many countries, however, such formal reports may not be available. This does not mean that other sources of information cannot be used for this purpose as long as they meet the standards of the rules of evidence with respect to accuracy and reliability. Recommendations, too, may be received from other sources but the court will need to evaluate such recommendations all the more carefully to ensure that they are sound and objective.

Similarly, the implementation of some, although not all, alternatives requires an infrastructure in the community. This may be provided by specialist bodies, such as a probation service, which may play a role in several alternative sentencing dispositions already discussed. Use may also be made of other official structures, such as the police, for whom a degree of responsibility for the implementation of sentences will be only one responsibility among many.

A modern development is the increasing use of technology to monitor the implementation of sentences in the community. For example, offenders

[33]Social inquiry reports, also known as pre-sentencing or pre-disposition reports, are descriptions of the background of offenders and the circumstances of their lives relevant to understanding why they committed their offences, are made available to courts before they impose sentence. Such reports may also include recommendations on sentencing alternatives.

[34]Rule 7.1.

can be required to telephone regularly from home to ensure that they are obeying a house arrest order. They may even have a device attached to their telephones that measures whether they have been using alcohol when they call in.

Tagging offenders to reduce imprisonment

Sweden adopted a system of intensive supervision by electronic monitoring during the 1990s (ISEM). On the offender's request, correctional authorities could commute a prison sentence of up to three months to electronic monitoring. The days under electronic tagging were matched one-to-one with the days the offender would have been served in prison. Sweden expanded tagging as a means of earlier release in 2001; four years later, it made this option permanent. All offenders serving a sentence of at least 1.5 years may apply to serve the last four months under electronic monitoring. In 2005, Swedish authorities also raised the length of the application of electronic monitoring to six months from three.

Under this electronic monitoring programme, the offender is under house arrest except for time allowed by the probation service for employment, training, health care, or participation in therapeutic programmes. The probation service draws up a detailed schedule. Monitoring is carried out principally by means of an electronic tagging device. In addition, authorities make unannounced visits to the person's home, and the convicted person must visit the probation service at least once a week and take part in the programmes provided.

The number of prison sentences commuted to electronic monitoring rose rapidly to 4,000 a year in 1998. Since then, the number has fallen to about 2,500. This is mainly due of a new combination of conditional sentence and community service that has replaced some of the short-term prison sentences.

Overall, Sweden has found the experience a positive one. Although those sentenced to electronic monitoring and their family members experienced some of the restrictions imposed by ISEM as stressful and threatening to their personal integrity, they perceived the restrictions of prison as far less attractive. As a corrective measure, electronic monitoring is considerably cheaper than prison. It also yields substantial economic gains for all parties, since the sentenced person can usually continue working at his ordinary place of employment.

Source: For more information: Intensiv-overvakning med elektronisk kontroll Brå-rapporter 1999:4. Electronic tagging in Sweden – Report from a trial project conducted between 2001 and 2004. Brå rapporter 2005:8.

Electronic monitoring is being used increasingly not only to keep track of people who are awaiting trial, but also as a means of enforcing a range of

sentences that are implemented in the community.[35] In some jurisdictions, its use in the latter role has been controversial. On the positive side, it is an effective way of keeping track of offenders who are serving their sentences in the community. It also saves on personnel costs and avoids potentially confrontational interactions with the offenders.

There are several other considerations, however. The technology may be expensive. In less developed societies, it may not be possible to use electronic monitoring, as there is not the technical infrastructure to implement it. In other societies, technical difficulties will mean that it is a solution for some offenders but not for others. This may result in unfair discrimination. (The same applies to other technological solutions such as those that require the use of a fixed telephone, which may discriminate against those offenders who do not have access to such a telephone.)

In any event, it may be more desirable to have supervision conducted by human beings rather than by machines. In many developing societies where labour costs are low, it may even be more economical to employ such supervisors rather than set up and maintain the complex technology needed for electronic monitoring. Most fundamentally, the objection may be made that the fitting of an electronic bracelet to an offender is an infringement of privacy, if not of human dignity, that is itself a punishment and not merely a technique for ensuring compliance with other restrictions. Improvements in technology, such as the increased use of mobile telephones as a means of monitoring, may allow some of these considerations to weigh less heavily in the future.

4.5 Choosing alternatives to imprisonment at the sentencing stage

The Tokyo Rules deal with the objective of sentencing in general terms only. Rule 3.2 provides: "The selection of non-custodial measures shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, the background of the offender, the purposes of sentencing and the rights of victims."

Courts can implement the use of alternatives in a manner that meets these multiple sentencing objectives, at least to some extent. This is particularly true where a non-custodial sentence has an arguably equivalent punitive effect to what the judge would otherwise seek to achieve with a prison sentence. Those who emphasize that the key purpose of sentencing is to give offenders their just desserts deal with this problem by scaling

[35]See Mike Nellis, "Electronic monitoring and the community supervision of offenders" in Anthony Bottoms, Sue Rex and Gwen Robinson (eds.), *Alternatives to Prison: Options for an insecure society* Willan, Cullumpton 2004 pp. 224-247; Annesley K. Schmidt "Electronic Monitoring in the United States" in Zvekic op. cit. pp. 363-383.

punishments to their penal impact. They have found that the punitive impact of some custodial punishments overlaps with that of a range of non-custodial punishments. (Different non-custodial sentences, such as a substantial day-fine and a period of intensive probation, for example, may also overlap.) This is typically most true for crimes of medium seriousness; very serious offences are typically punished with imprisonment, while lesser offences do not attract imprisonment. For offences in the middle range of seriousness, non-custodial penalties can best be used. Given the imperatives for finding alternatives to imprisonment, they should be imposed in lieu of imprisonment wherever appropriate.

Community service replaces short prison sentences

Community service was introduced into the Finnish penal system during the 1990s and is ordered when unconditional (actual rather than suspended or deferred) sentences of imprisonment of up to eight months would have been imposed. In order to ensure that community service will really be used in lieu of unconditional sentences of imprisonment, a two-step procedure was adopted.

First the court is supposed to make its sentencing decision in accordance with the normal principles and criteria of sentencing, without even considering the possibility of community service. If the result is unconditional imprisonment, the court must state both the type of sentence and the length of the prison term in its decision. After that, the court may commute the prison term into community service under certain conditions defined more specifically in the law.

The amount of community service varies between 20 and 200 hours. In commuting imprisonment into community service, one day in prison equals one hour of community service. Thus, two months of custodial sentence should be commuted into roughly 60 hours of community service. If the conditions of the community service order are violated, the court normally imposes a new unconditional sentence of imprisonment.

The intent of the Finnish law was that community service was to be used only in cases where the offender would have received an unconditional sentence of imprisonment, rather than widening the net to include offenders who would otherwise not have received this level of sentence. That goal was achieved. In the first few years after legislative adoption of the new sanction, some 3,500 community service orders were imposed annually, replacing approximately 35 per cent of the prison sentences of up to eight months. This corresponds to a reduction of some 400 to 500 prisoners (10-15 per cent of the prison population) in the daily prison population. At its height, the number of such community service sentences imposed climbed to 4,000 annually. At the same time, the number of sentences of imprisonment fell from around 10,000 to 6,000 annually.

Source: For more information: see Tapio Lappi-Seppälä, "Sentencing and Punishment in Finland: The Decline of the Repressive Ideal." in *Sentencing and Sanctions in Western Countries*, edited by Michael Tonry and Richard Frase, New York: Oxford University Press, 2001.

In practice, the difficulty is to ensure that this occurs to the extent possible. One means is to require, via legislation, judges to impose a non-custodial sentence in all cases where they would have imposed short prison sentences, that is, a sentence of six months or less. A number of countries have used this strategy to good effect. See the entitled "community service replaces short prison sentences" for an example of such a use.

If judges do not regard available non-custodial alternatives as realistic options, however, there is a risk that they will respond by imposing sentences of imprisonment that are just beyond the reach of the statutory mandate, a sentence of eight months and one day under the legisla-tion in the case study above, for example, making such an initiative counterproductive. Constant emphasis on the sparing use of imprisonment and the substitutability of meaningful alternative sentences for medium severity offences is the best antidote to this. The box below provides a practical example of an alternative sanction achieving credibility.

Fines as an alternative to short-term prison sentences

In 1969, West Germany overhauled its penal code in order to reduce the use of custodial measures. To achieve this, it restricted the use of short-term imprisonment. To this day, what is now the German Penal Code strongly discourages the imposition of sentences of imprisonment of fewer than six months, with judges being required to specify their reasons for imposing such sentences.

As a result, courts have turned to alternative sanctions to replace short-term prison sentences and have, just as importantly, increased the length of prison sentences. Fines became the most influential alternative after the adoption of a day-fine system in 1969. The day-fine system increased both the amount and credibility of fines as an alternative, much as it happened in the Scandinavian countries that originally developed this system.

The use of fines was among the key factors that explained the radical fall of annually imposed short-term prison sentences. In 1968, the courts imposed a total of 119,000 prison sentences of fewer than nine months. By 1976, that number had fallen to 19,000. During the same period, the use of fines rose to 490,000 from 360,000. The expanded use of suspended sentences enabled the courts in the following years to hold the number of prison sentences stable despite a steep increase in crime between the late 1960s and the early 1990s.

Source: For more information: Thomas Weigend, "Sentencing and Punishment in Germany" in *Sentencing and Sanctions in Western Countries*, edited by Michael Tonry and Richard Frase, New York: Oxford University Press, 2001.

Traditional practices may also serve as a model for alternative sentencing:

Considering traditional alternatives: sentencing circles

Circle sentencing uses traditional Aboriginal healing practices and a process of reconciliation, restitution and reparation to address the needs of victims and offenders, their families and community. Circle sentencing began in several Yukon communities.

In circle sentencing, participants—judge, defence, prosecution, police, victim/offender and family, and community residents—sit facing one another in a circle. Discussion is aimed at reaching a consensus about the best way to resolve the case, focusing on both the need to protect the community and the rehabilitation and punishment of the offender.

Circle sentencing is focused mainly on those offenders who plead guilty. Although these offenders may still serve time in prison, there are many other sanctions available, such as community service.

Circle sentencing differs markedly from courts. Circle sentencing focuses, for example, on the process of reaching a sentence, rather than the punishment itself, and helps shape the relationships among the parties. It looks to the present and the future, rather than the past offence, and takes a larger, more holistic view of behaviour.

Source: C. T. Griffiths, *Canadian Criminal Justice: A Primer,* third edition, published by Thomson Nelson (2006).

Given that the reason for considering non-custodial sentences in this handbook is to create real alternatives to imprisonment, attention must also be paid to the provision that is made for what happens if the offender fails to fulfil the conditions of the non-custodial penalty. If, for example, a fine is imposed that is beyond the means of the offender and the penalty for failure to pay is an automatic term of imprisonment, the fine is not really an alternative sentence.

Non-custodial sentences should be tailored to avoid this outcome. Fines, for example, may be made payable in instalments, or community service orders may have some flexibility in how many hours the offender must work each week.

Most importantly, imprisonment should not be the automatic default sentence for failure to fulfil the requirements of the non-custodial sentence.[36] Where, for example, an offender fails to meet the conditions of a community service order fully or fails to make all the restitution to a victim that was required, a hearing should be held to determine the causes of the failure. In deciding what further action is to be taken against the offender, partial fulfilment must be seen as a proportionately positive

[36]Rule 14.1 of the Tokyo Rules.

factor. A custodial sentence should not necessarily follow, but careful consideration should be given to replacing the original non-custodial sentence by another such sentence that will meet the objectives sought in fashioning the original sentence.[37]

Finally, in considering the implementation of non-custodial sentences, it should be noted that there is an ongoing risk that the sentences developed as alternatives to imprisonment will not be used for that purpose. They may be imposed instead as additional penalties in cases where imprisonment would not have been seriously considered in the first instance, thus widening the net of social control under the jurisdiction of the criminal justice system. In terms of the principle of parsimony in sentencing, this is generally an undesirable development, and steps should be taken to prevent it.

4.6 Who should act?

The involvement of the following individuals and groups is essential:

Judges and courts, terms we use interchangeably in this section, are the key players in the use of sentences that are alternatives to imprisonment. They must exercise discretion to impose alternatives wherever possible and, when imprisonment is unavoidable, to impose it for the shortest possible period.

Legislators must create a framework of sentencing law that provides for alternatives and encourages the sparing use of the sentence of imprisonment.

Administrators help create suitable alternatives. Some alternatives require a comprehensive administrative infrastructure before judges can use them.

Probation officers must provide a consistent service to reassure judges—and the public—that the alternative sentences they impose will be adequately implemented.

Community leaders help persuade the public to accept offenders who serve sentences in their midst and encourage the public to assist in the implementation of such sentences.

Volunteers can also help implement community-based sentences. The Tokyo Rules emphasize this with provisions for the training of volunteers and their reimbursement. They also call for their public recognition. However, as the official commentary on the Tokyo Rules notes: "It should be clear that volunteers are not being employed in order to take on work that ought to be carried out by professional staff fully accountable to the implementing authority."[38]

[37]Rule 14.3.
[38]Commentary to Rule 19 of the Tokyo Rules.

5. Early release

5.1 Forms of early release

Most countries in the world have mechanisms in place that allow prisoners to be released before they have completed their full prison terms, but these are not always conceived of as alternatives to imprisonment. Some forms of early release, such as parole, are often not used in developing countries because of a lack of resources.

Early release potentially has considerable practical importance in reducing prison numbers and in ensuring that imprisonment is used as sparingly as possible.

A strategy to develop such alternatives must seek to incorporate such mechanisms, for early release potentially has considerable practical importance in reducing prison numbers and in ensuring that imprisonment is used as sparingly as possible. Care must be taken, however, to ensure that power to grant early release is not abused.

Early release can take a number of forms. These vary from measures that range from relaxations of the prison regime that allow the prisoner a limited amount of access to free society through conditional release in the community to early unconditional release. Only conditional release in the community is genuinely a matter of putting something in place of imprisonment, but all these strategies are relevant to the wider objective of reducing the use of imprisonment.

The Tokyo Rules also adopt a wide-ranging approach to this issue. The official Commentary on the Tokyo Rules observes that the Rules relating to the post-sentencing stage deal with "measures to reduce the length of

prison sentences or to offer alternatives to enforcing prison sentences."[39] Rule 9.2 lists "post-sentencing dispositions" that should be available to achieve these objectives. They are:

- Furlough and halfway houses;
- Work or education release;
- Various forms of parole;
- Remission; and
- Pardon.

Strictly speaking, the first two of these are not fully alternatives to imprisonment. Prisoners who are granted furloughs, that is, short periods of leave from prison in the course of terms of imprisonment, or who live in halfway houses before being released into the community, remain prisoners in terms of the law and subject to the rules of prison discipline. Similarly, prisoners who are temporarily allowed out of prison to work or for educational purposes do not lose their "prisoner" status. These dispositions are still of value in allowing prisoners to improve themselves and in easing their transition back to the community. See the box below for an example of prisoners living in open prisons.

Beyond the walls: open prisons

Prisoners between the ages of 30 and 46 who are serving prison terms in the Rajasthan state of India may transfer to an open prison camp at Sanganer, Jaipur after completing one third (including remission) of their sentence, which, for a life sentence, is calculated to be seven years. In addition, prison authorities must ensure that the prisoners meet established criteria, including that they are free from mental or physical infirmity, have demonstrated good conduct while in prison, and are residents of Rajasthan. Many have committed murder, though professional assassins are excluded from eligibility.

Once at the open prison camp, these prisoners construct their own dwellings, where they live with their families, who are encouraged to join them. Their children attend local schools. Prisoners cultivate the camp's land, do public works, conduct independent businesses, or work for outside employers. They self-govern their camp community through an elected council of village elders, with the handful of camp officials focusing on facilitating employment and other matters, rather than on security. The prisoners receive remission credited against their sentences, and having completed them, are then released. This model is being replicated by other states in India as well as attracting regional interest.

Source: See Khushal I. Vibhute, "Open Peno-correctional Institutions in India: A Review of Fifty-five Years", Max Planck Institute for Foreign and International Criminal Law, March, 2006; "Jailhouse Rocks" in The Telegraph, September 5, 2004, Calcutta; "A Village in a Village" in the Deccan Herald, March 28, 2004, Bangalore.

[39] Commentary to Rule 9 of the Tokyo Rules.

As in the case of alternative sentences, the Tokyo Rules do not define the different dispositions they list at the post-sentencing stage. In what follows, an attempt is made to detail each of these categories:

Various forms of parole: The term "parole" is not found in all criminal justice systems; the term "conditional release" may be preferable. Conditional release, however, connotes various meanings to different jurisdictions. For some, conditional release implies only that the prisoner is released with the routine condition of obeying all laws and perhaps remaining in regular contact with the authorities. For others, conditional release may be limited to the release of prisoners with individualized post-release conditions, thereby excluding cases where the only condition routinely set is that the offender is to comply with all laws, and perhaps as well, where conditions are set automatically.

In many parts of the world, however, the only conditions imposed are that an offender does not commit a further offence during the remainder of the sentence and/or that they report routinely to the authorities. These are also the only conditions that some countries can realistically enforce. The disadvantage to such conditions is that they are not related specifically to the needs of the individual offender and are less likely to assist him or her in transitioning from prison to a law-abiding life in the community.

Given these differences, we will define parole (or conditional release) as the release of an offender on conditions that are set prior to release and that remain in force, unless altered, until the full term of the sentence has expired.

Conditional release can be mandatory when it takes place automatically after a minimum period or a fixed proportion of the sentence has been served, or it can be discretionary when a decision has to be made to release a prisoner conditionally. In jurisdictions where prisoners have to apply for parole before it is considered, they should be encouraged to do so.

Remission, in which a prisoner is released unconditionally before the end of the sentence, is a form of unconditional release. Remission is usually awarded automatically after the offender has served a fixed proportion of a sentence, but it may also be a fixed period that is deducted from a sentence. Sometimes remission is made dependent on good behaviour in prison. It can be limited or forfeited in part or whole if the prisoner does not behave appropriately or commits a disciplinary offence.

Pardon, which ordinarily means release following the setting aside of the conviction or sentence, is also a form of unconditional release. It is usually an act of grace and favour by the head of state. A pardon takes two forms. In one, a pardon releases the offender and entirely sets aside his conviction and sentence. The other form, also known as amnesty, moves

forward the release date of an offender or class of offenders. A head of state would also order an amnesty. This terminology is not fixed, though, and pardon and amnesty are used interchangeably.

Some countries have considered broad-scale early release programmes. The box below presents a practical example.

Nigeria to free half its inmates

Up to 25,000 people, including the sick, the elderly and those with HIV will be freed, said Justice Minister Bayo Ojo.

Those who have been awaiting trial for longer than the sentences they face and those whose case files have been lost by the authorities will also benefit.

Correspondents say many people wait up to 10 years, often in awful conditions, for their case to come to trial.

Human rights groups say death rates are unacceptably high for inmates who endure overcrowded and unsanitary conditions.

"The issue of awaiting-trial inmates has become an endemic problem in Nigeria … The conditions of the prisons are just too terrible. The conditions negate the essence of prison which is to reform," Mr Ojo said.

There are currently some 40,444 inmates held in 227 prisons across Nigeria.

Some 65 per cent of these are awaiting trial.

The government will build six "halfway houses" to provide those being freed with education and training, Mr Ojo said.

"By the time the process is completed, we hope to have reduced the inmates to between 15,000 and 20,000," Mr Ojo told a news conference.

Source: BBC NEWS: http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/4583282.stm, 2006/01/05 09:59:40 GMT/.

5.2 Early release: concerns and responses

Even though early release, whatever its form, reduces prison populations, it is met with a number of concerns. Not all of these apply with equal force to all forms of early release.

> *Concern: Early release undermines the authority of the sentencing court and thus of public trust as it results in the offender serving a different sentence to that which was publicly imposed.*

Authorities need to make clear to all concerned that a sentence includes the possibility of early release. They must spell out openly the basis for

such a release and what conditions would apply to it. They should explain these issues at the time of sentencing, when public attention is most focused on the justness of the penalty. Offenders should also know at an early stage what they must do to qualify for early release and how they need to behave to ensure that they do not lose eligibility for such a release.

Concern: Early release reduces the protection that a prison sentence offers the public, for at least a time, from offenders who are incarcerated.

The vast majority of offenders are released at some stage. A planned conditional release that facilitates their integration into the community offers the public better protection because it makes it less likely that former offenders will continue their criminal behaviour.

Restrictions placed on potentially dangerous offenders after their release into the community may also help reassure the public. But this route requires a delicate balancing of interests. Restrictions the public may regard as necessary may not be those that will best allow the offender to reintegrate into society. This is particularly true if restrictions continue beyond the duration of the originally imposed sentence. Such restrictions are no longer alternatives to imprisonment, but are instead additional burdens on an offender who has already finished his full sentence. If the law allows these further restrictions, courts should impose them only on highly dangerous offenders and then only for the shortest possible period.

Concern: Early release is unfair to offenders. It is sometimes granted or refused arbitrarily.

Authorities must put in place procedures to ensure fairness in such decisions. The simplest approach is to grant early release automatically when a fixed proportion of the sentence has been served. This, however, removes authorities' discretion in evaluating whether an offender is ready for release on the basis of prison behaviour and the risk he or she may still pose to society at large. In practice, particularly where the prisoner is serving a short sentence, it may be unrealistic to attempt an evaluation, in which case the prisoner should be released when a set minimum period has been served.

Where early release is conditional on good behaviour in prison, it is important that the presence or absence of such behaviour be determined fairly. The European Court of Human Rights has recognized that a penalty of loss of remission for a disciplinary infringement may be regarded as the equivalent of an additional sentence of imprisonment.[40] The disciplinary procedure resulting in such an outcome must therefore

[40] *Ezeh and Connors v United Kingdom* nos. 39665/98 and 40086/98 ECHR 2003-X (19.10.2003).

meet the procedural standards of due process required for a criminal trial even if it is not formally labelled as such.

Pardons and amnesties are particularly vulnerable to the criticism that they may be arbitrary and lead to abuse of power and corruption. The traditional view is that these powers exercised by the head of state are not subject to judicial review. This is also expressed in the Tokyo Rules, which provide that "post sentencing dispositions, *except in the case of pardon*, shall be subject to review by a judicial or other competent independent authority, upon the application of the offender".[41] More modern administrative law in a number of jurisdictions recognizes, however, that, while heads of state have very wide discretion when exercising these (prerogative) powers, they are still bound by constitutional principles that outlaw arbitrariness and unfair discrimination. If they infringe against these principles, they, too, can be challenged in court.

What powers should leaders have to grant amnesties?

Can a president decide to grant a general amnesty to all women prisoners who have young children but not to men who are in the same position?

In South Africa, President Nelson Mandela granted such an amnesty shortly after coming to power in 1994. It was challenged as discriminating unfairly against men. This challenge was upheld by the High Court. On appeal, the Constitutional Court confirmed that the Constitution did not allow the President to discriminate unfairly, even when exercising his power to pardon. It held, however, that it was not unfair to release the women as, in practice, they bore the main burden of looking after young children.*

Where general amnesties are used as a solution to prison overcrowding, careful planning can avoid some of the potentially negative effects on the administration of justice. For example, amnesties need not imply unconditional release as those who are granted amnesty may legitimately be subjected to some control in the community in the same way as prisoners who are released conditionally. However, an amnesty may bring about a great increase in the number of prisoners subject to these controls.

**President of the Republic of South Africa and another v Hugo* 1997 (1) SACR 567 (CC).

Concern: Conditions set on release may impose an additional burden on the sentenced prisoner that was not envisaged at the time of his sentence, thus exposing him to the risk of being punished twice.

The authorities must choose the conditions carefully. Not all the alternatives to imprisonment suitable for the sentencing stage are appropriate as

[41] Rule 9.3. Emphasis added.

conditions of release. A court may not release a prisoner on condition that he pay a fine, for example, if it did not impose a fine in the original sentence. The conditions that are imposed should relate either to assisting the reintegration of the prisoners into society or to exercising a measure of control on them while they are subject to such conditions.

The offender may still perceive the conditions of release as additional punishment, even if they were imposed to further the objectives noted above. To help alleviate these concerns, the authorities should give prisoners the choice of whether to accept early release on the conditions proposed by the authorities. The authorities should also review the conditions regularly to determine whether the restrictions imposed on the offender's liberty continue to be necessary.

5.3 Early release on compassionate grounds

An established system of early release provides the prison system with alternatives for dealing with offenders who may be particularly vulnerable to the rigours of imprisonment, a vulnerability that may emerge after initial sentencing.

Terminally ill prisoners targeted for early release

In South Africa, to assist the parole board, physicians submit monthly medical reports for all offenders under consideration for early release:

- A thorough medical examination should be conducted to assist decisions by parole boards.
- Two independent medical doctors must examine the prisoner who is to be considered for early release.
- Social work reports should also be submitted to indicate the availability of aftercare and care providers.
- In all cases of referrals to other care providers, the offender must give an informed consent.
- Early identification of the relatives and other service providers for HIV/AIDS infected prisoners is important to facilitate placement after release. This can be achieved through partnership with other service providers including the families.
- Each prison must identify community structures to assist with placement after release. Such services should include hospice care, social workers, and others to assist in training relatives.

The terminally ill are a category of prisoner for whom early release would be considered appropriate, if not automatic. Some criminal justice systems have special procedures to consider accelerated parole for the terminally ill; others might make use of special pardons. Once it is established that these inmates have no hope of recovery, the criminal justice system should release them without delay and make arrangements for their continued medical treatment in the community. As they are highly unlikely to re-offend, courts generally need not set strict conditions governing their release. The box entitled "Terminally ill prisoners targeted for early release" highlights a practical example of guidelines for the early release of the terminally ill.

Criminal justice systems should also consider releasing the very elderly on compassionate grounds, even if they are not terminally ill. Prisons are not suitable institutions for old people. A practical difficulty is that the elderly may not have a ready-made support network when they return to society. The criminal justice system should therefore pay particular attention to finding them appropriate accommodation on release.

5.4 Conditional release and its administrative infrastructure

The Tokyo Rules do not specify the conditions that may be set for the release of sentenced prisoners, and, therefore, provide no guidance on the institutional arrangements necessary to facilitate this alternative to imprisonment. The Council of Europe's 2003 recommendation on conditional release (parole) offers some assistance. It suggests the inclusion, in addition to the standard requirement that the offender does not re-offend during the remainder of the sentence, of individualized conditions such as:

- the payment of compensation or the making of reparation to victims;
- entering into treatment for drug or alcohol misuse or any other treatable condition associated with the commission of crime;
- working or following some other approved occupational activity, for instance, education or vocational training;
- participation in personal development programmes;
- a prohibition on residing in, or visiting, certain places.[42]

The infrastructure required to implement these conditions is similar to that required for the implementation of non-custodial sentences discussed in sections 4.3 and 4.4 of chapter 4. A probation service can assist

[42]Recommendation Rec(2003)22 of the Committee of Ministers of the Council of Europe on conditional release (parole), adopted on 24 September 2003, para. 8.

offenders who are conditionally released in meeting the conditions that are set for them, while also ensuring that they do so. Courts can also use electronic technology, including tagging, to monitor aspects of conditional release, such as the requirement that a person resides at a fixed address or does not visit a particular place. The advantages and disadvantages of the use of probation officers and electronic monitoring apply in the support of conditional release just as they did in the use of non-custodial sentences.

The community must cooperate to make some early release conditions viable. A chief concern is finding work for offenders who are subject to conditional release. Ideally, private employers would offer offenders work of the type that they would be likely to continue after completing their sentences. Educational or vocational training and personal development programmes offered to conditionally released offenders must also be available in the community. Even if the state does not directly provide work for conditionally released offenders or the training and programmes they may need, it plays a crucial coordinating role to ensure that knowledge of what is available is conveyed to the authorities who decide on conditional release.

An infrastructure that supports proper decision-making about early release must exist. In many countries, a parole board, a body loosely affiliated with the authority responsible for execution of sentences, makes these decisions. Such a parole board should be able to make its decisions independently. In some others, the judicial authority makes these decisions, helping to ensure that they are independent.

Authorities increasingly recognize the need to ensure that decisions on early release, whoever makes them, are handled in a way that is procedurally fair to the offender. This means that the infrastructure must provide the decision-maker with the necessary information about the prisoner, his or her prospects upon early release, and what conditions may be appropriate for early release. The offender must be provided with an opportunity to be heard during into the decision-making process.

The same infrastructure must have the ability to modify the conditions of release. An established, fair, and impartial procedure must exist for judging alleged infringements of the conditions of release, particularly where such infringements could result in withdrawal of early release and re-imprisonment. Authorities should not order withdrawal for trivial breaches of conditions. Where possible, they should instead modify the conditions. Where they consider withdrawal unavoidable, they should consider the period of time served on conditional release when deciding for how long an offender is to return to prison.

Finally, as noted above, an appellate structure needs to exist to review decisions relating to early release. Specialist tribunals or the national court

system may conduct the reviews. Whatever form these reviews take, the structure must allow prompt action to review any decision resulting in early release that substantially affects the rights and duties of offenders. In practice, this means that reviews may not be required for minor modifications of release conditions; however, prompt and effective reviews are critical for decisions on the following matters: release, conditions of release, significant alteration of the conditions of release, and decisions to withdraw release.

5.5 Who should act?

The involvement of the following individuals and groups is essential:

Legislators must create a procedural framework that allows early release and the decision making and review processes that allow its use.

Prison authorities are key players in the process of early release, unless release is triggered automatically. They refer early release candidates to the bodies that decide whether to release them and prepare prisoners for early release if granted.

Administrators must provide an institutional infrastructure that allows for the imposition of suitable conditions of release.

Probation officers, or officials playing a similar role, assist offenders. They ensure that they meet the conditions set for their release. To do this effectively, they need to cooperate with prison authorities to coordinate the release process and to ensure that prisoners are suitably prepared for life in the community.

The police, too, should be encouraged to play a supportive role in the contact with offenders who have been released conditionally.

Non-governmental organizations and **members of the wider public** can help by offering work to prisoners who are conditionally released and assisting with their integration into the community.

Heads of state make major strategic decisions when deciding to use their powers of pardon and amnesty. These are particularly important when mass amnesty may be the only way of reducing or avoiding the drastic overcrowding that produces prison conditions that impinge on fundamental human rights.

6. Special categories

6.1 General

Prisons are particularly poorly placed to provide the care these special categories of prisoners need.

Prisons primarily detain adults who are awaiting trial on criminal charges or who are serving sentences of imprisonment, but they may also detain mentally ill adults, those who are addicted to drugs, or children involved in crime or delinquency. Such persons may be in prison as a result of formal proceedings. However, where this is not the case, their imprisonment poses grave human rights concerns. Whatever their legal status, prisons are particularly poorly placed to provide the care these prisoners need. Accordingly, this handbook focuses on the urgent need to develop alternatives to imprisonment for these special categories of prisoners.

6.2 Children

The United Nations Convention on the Rights of the Child underlines the urgency of finding alternatives to the imprisonment of children by providing: "The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as *a measure of last resort and for the shortest appropriate period of time*."[43] The Convention, together with other instruments such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), also indicates how this can be done in all the major areas covered by this handbook.

[43] Art 37 (b). Emphasis added.

The Convention defines a child as a person under the age of 18. Other United Nations instruments use the term "juvenile". This handbook uses that term interchangeably with "child". Many of the principles we discuss in this section may also apply to young adults older than 18 years. They should be applied to them wherever possible.

Keeping children out of the criminal justice system

The children most at risk of imprisonment are those who are seen as criminally responsible, who are suspected of committing crimes, or who have been convicted of offences that are crimes when committed by adults. The decriminalization of such offences should, at a stroke, reduce the number of children in prison. However, authorities can address the *decriminalization* of children in two other ways. They may address the question of whether children are criminally responsible. A radical approach would adjust the minimum age of criminal responsibility. Legal systems set a minimum age below which children are not held responsible for what they do. These minimum ages vary enormously, from the age of seven in countries such as Ireland or South Africa, to 14 in Germany, Japan and Vietnam, to 18 in Brazil and Peru.[44] No international standards exist that establish the minimum age of criminal responsibility, but the Beijing Rules stipulate that the age should not "be fixed at too low an age level bearing in mind the facts of emotional, mental and intellectual maturity".[45] If authorities raise the minimum age to 13 years from seven, they automatically exclude a number of children from the criminal justice system who therefore cannot be legally held in a prison. Authorities must also ensure that children who are not subject to the criminal law are not held in other institutions, which, although technically not prisons, are equally harsh.

In a more graduated approach, legislation on criminal responsibility can require that, for children of a certain age group, the individual child's capacity to understand the difference between right and wrong be assessed. For this age range, the state would bear the burden of proving that the child had the capacity to differentiate between right and wrong at the time of the offence and was able to conform his or her behaviour to that understanding. This solution is attractive, because it allows for the consideration of the child's capacity and does not rely on an arbitrary cut-off point. The practical danger is, however, that authorities might too easily presume the child's criminal responsibility and children continue to fall within the criminal justice system. Where authorities adopt this approach, the standard of proof must be enforced.

The box below provides an example of juvenile penal code reform.

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[44]United Nations *Implementation of United Nations Mandates on Juvenile Justice* New York 1994.
[45]Rule 4.1.

Juvenile penal code reforms focus on alternatives

With the legal reform of 6 July 2002, Lebanese legislators sought to ensure for juveniles the pre-eminence of protection, education and rehabilitation measures over imprisonment. Although earlier legislation provided for rehabilitation and reintegration measures, they were rarely applied. Some were impossible to implement due to the vagueness of their content.

Authorities analysed data from the courts and discovered that the phenomenon of increasing juvenile delinquency rates in the wake of the 1975-1990 civil war was essentially one of low-level delinquency and not of serious crime. Three-quarters of the cases reviewed involved less serious or petty offences.

Among other changes, the reform, which was supported by the United Nations Office on Drugs and Crime, expanded the range of measures available to the courts as sentencing dispositions for juveniles and defined them with precision. The expanded sentencing dispositions focus on rehabilitating the minor in his or her home environment.

The Lebanese experience of reform has been a small step in the evolution of justice for juvenile offenders and has contributed to an improvement in conditions for children and adolescents in the country.

When definitions of juvenile offences drive imprisonment

In the Democratic Republic of Congo, a 1950 decree on juvenile delinquency lists the following situations in which young persons put themselves in conflict with the law:

1. Children who beg or are vagrant.
2. Children who by misconduct or lack of discipline create serious cause for dissatisfaction from their parents, tutors or other people charged with their care.
3. Children who engage in immoral acts or seek resources from gambling, trafficking in goods, activities that expose them to prostitution, begging, vagrancy or criminality.
4. Children who have committed an act considered a criminal offence in the adult criminal justice system.

As a result of this decades-old decree, in 2003, only one of all of the children who were adjudicated by the courts and sent to the Etablissements de Garde et d'Education de l'Etat (EGEE) had committed an act that would have been considered a criminal offence had it been committed by an adult. The remainder fell under the provisions set out above for parental disobedience, deviance or failing to attend school.

Authorities may decriminalize some conduct by children that is regarded as criminal when committed by adults. On the other hand, in many societies, authorities criminalize conduct by children that is not considered criminal when committed by adults. Truancy from school, runaway and, more vaguely, anti-social behaviour, are so-called status offences in which children may be prosecuted under criminal law. There is also a danger that such children are detained but never prosecuted. In the case of status offences, detention is used improperly as the substitute for what is too often an inadequate or non-existent social welfare system.

Sometimes the criminalization is indirect. Children who commit status offences may the subject of a court order forbidding them from repeating the conduct underlying the status offence. If they then re-offend, they are prosecuted for violating the court's order (contempt of court). They then fall within the criminal justice net and may eventually go to prison. Authorities should take action to guard against this indirect criminalization and to keep children out of prison.

Diversion of offenders from the criminal justice system is a strategy that is particularly applicable to children. The Beijing Rules provide specifically that "[c]onsideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to a formal trial".[46] The police and the prosecution or other agencies are directed to ensure that this occurs.[47]

The Beijing Rules also provide that those involved in dealing with children who may be in conflict with the law should have as much discretion as possible in making decisions about how to deal with them.[48] The authorities can then direct children away from the criminal justice process when it would be in the children's best interests to do so. The authorities must exercise such discretion, however, in a fair and accountable manner.[49]

Further, the Rules emphasize the importance of obtaining the child's and his or her parents' or guardian's consent for such diversion in order to protect them from being pressured into admitting offences that he or she may not have committed.[50] Finally, community-based programmes should be developed to provide sufficient capacity to provide children with the appropriate treatment and services they may require.[51]

Alternatives for children in the criminal justice system

The Beijing Rules are explicit about the approach to be adopted regarding the pre-trial detention of children: "Detention pending trial shall be used

[46]Rule 11.1.
[47]Rule 12.2.
[48]Rule 6.1.
[49]Rule 6.2.
[50]Rule 11.3.
[51]Rule 11.4.

only as a measure of last resort and for the shortest possible period of time."[52] This Rule is identical to the one to be adopted for adults and is underpinned by the same thinking: the presumption of innocence and other procedural safeguards, with the added emphasis that the detention of children is inherently harmful to them.

As in the case of adults, authorities must search for alternatives to pre-trial detention, but they have additional alternatives at hand for children. The Beijing Rules provide that "[w]henever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or a home."[53]

These additional alternatives share a common feature: an adult authority figure, who may possibly, but not necessarily, be a parent or foster parent who takes responsibility for the child. Authorities must ensure that when they place children in some form of supported accommodation,[54] that this is not incarceration under another name. An educational institution, for example, may seem a harmless enough alternative to imprisonment, but, if the institution fundamentally restricts the liberty of the child, it might share many of the shortcomings of imprisonment. On the other hand, a prison for adults, even if children are kept in a separate section, is never a desirable place for children while they await trial. Other secure accommodation may be the lesser of two evils where detention of a child is essential.

Parsimony, or the sparing use of imprisonment, is a particularly important principle for children. Authorities should reach for alternatives whenever possible. The Beijing Rules clearly limit the offences for which children can be incarcerated following a finding that they have committed the offence:

> Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.[55]

When authorities imprison children, they should do so for the shortest period possible, even for the serious offences. Again, children should never be housed with adult prisoners.[56] The Convention on the Rights of the Child forbids sentencing children to life imprisonment without the prospect of release.[57] Courts should not subject children to indeterminate sentences, but if they do so, they should also set a nearby date at sentencing

[52]Rule 13.1.
[53]Rule 13.2.
[54]See Art 17 of Recommendation (2003)20 of the Council of Europe concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, which recognises this alternative to remand in custody.
[55]Rule 17.1.(c).
[56]Rule 26.3
[57]Art 37(a).

to consider the child's release. The courts should review the sentence regularly as the child's moral sense is developing.

The Beijing Rules make it quite clear that the institutionalization of children should be avoided.[58] Apart from human rights concerns, it is often counterproductive as a measure to re-educate children. The Rules list various dispositions that can be applied to children.[59] They are essentially similar to the specific non-custodial sentences for adults discussed in chapter 4.3. However, they also emphasize "care, guidance and supervision orders"[60] as well as "orders concerning foster care, living communities or other educational settings".[61] These dispositions underline the particular importance of welfare-oriented alternatives to sentences of imprisonment in the case of children.

Authorities can relatively easily justify the early release of children, and young offenders generally, on the basis that they deserve another opportunity to live a crime-free life in the community. They may apply general amnesties, for example, in the case of children without too much public outcry. The Beijing Rules provide specifically that "[c]onditional release from an institution shall be used by the appropriate authority to the greatest possible extent and shall be granted at the earliest possible time".[62] Children who are released must be prepared adequately for life outside prison. Both the state authorities and the wider community should provide them with support. [63]

Who should act?

The involvement of the following individuals and groups is essential:

Key players mentioned with regard to adults can also act to reduce child imprisonment as the alternatives cover the full range of strategies used for adults. The imprisonment of children is an emotive issue and campaigns aimed at alternatives often have more purchase when the focus is on children.

The work of **civil society organizations** may lend support to national initiatives led by children's charities and advocacy groups to mobilize national opinion in favour of children's release from prison.

6.3 Drug offenders

Offenders imprisoned for drug-related offences make up a large proportion of the prison population in most countries. In part this stems from

[58] Rule 19.1.
[59] Rule 18.1.
[60] Rule 18.1.(a).
[61] Rule 18.1.(c).
[62] Rule 28.1.
[63] Rule 28.2.

national and international efforts to combat the trafficking in illicit drugs. Many, if not most of these offenders, are not major players in the drugs trade, and often addicted to illicit drugs themselves. Alternatives to imprisonment targeted at these lower level drug offenders could deal more effectively with these offenders' issues. The major international instruments, including the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances[64] and the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations[65] recognize this. Their focus is combating drug trafficking, but they also call on governments to take multidisciplinary initiatives.[66] Alternatives to imprisonment are a key part of these.

Keeping drug users out of the criminal justice system

Alternatives to imprisonment in the context of drug users follow the same general reductionist strategies as for other crimes, albeit with different emphases.

Decriminalization is a controversial strategy in the drugs sphere. As an analogy, some states have prohibited alcohol in the past, then, as social attitudes changed, substituted more nuanced controls for the total ban. Sometimes, states may decriminalize partially, by downgrading a drug to a less dangerous status compared to others, or by decriminalizing possession but still considering trafficking an offence.

Diversion has a major role to play as an alternative to imprisonment. Authorities recognize that many offenders who violate drug laws, and indeed many offenders who commit other criminal acts, commit their crimes because they are themselves addicted to drugs. Authorities find that treating offenders for their addictions is more effective than processing and eventually punishing them through the criminal justice system.

Police divert drug offenders

When Australian police find individuals who have little or no past contact with the criminal justice system for drug offences in possession of small quantities of an illicit drug, they may ask whether the offender would agree to participate in a diversion programme. Such a programme is based on drug education and, if necessary, treatment. Offenders who elect to join the programme must participate fully in the education or treatment offered. They may be called upon to contribute financially to their treatment, if, for example, it includes residential rehabilitation. If they fail to participate fully, they risk return to the criminal justice system.*

*Australian Government *Illicit Drug Diversion Initiative: How Does Diversion Work*. Full report at http://www.gov.health.au/internet/wcms/publishing.nsf

[64]United Nations Doc. E/CONF.82.15.
[65]A/RES/S-20/3 of 8 September 1998.
[66]See in general Neil Boister, *Penal Aspects of the United Nations Drug Conventions*, Kluwer, The Hague 2001.

Diversion of drug users can take different forms. It can follow the same pattern as other offences where police and prosecutors use their discretion not to arrest or prosecute suspects. In these cases, offenders may need to take part in a drug education or a more formal treatment programme. The box entitled "Police divert drug offenders" provides one example of a programme of diversion for drug users.

In a number of countries, drug treatment courts formalize the diversion process.[67] These "drug courts", as they are widely known, are part of the criminal justice system but they operate as a diversion strategy. Offenders may be required to plead guilty in order to have their cases considered by a drug court, although this is not necessarily the case in all legal systems. The class of offenders who are targeted by drug courts may vary. In the United States of America, where the drug court movement originated over 15 years ago, participants initially were mostly first-time offenders, though most programmes now focus on far more involved substance abusers.[68] Similarly, in Australia, drug treatment courts are intended for drug-addicted offenders who have a long history of committing property offences. These latter drug courts are used as a final option before incarceration.

Instead of imposing a conventional sentence of imprisonment, the drug court requires a comprehensive treatment programme for the addiction and other issues confronting the participant, and backs it with monitoring and support of the offender. To aid this monitoring process, the court receives reports on offenders' progress.

From the perspective of the offender, such treatment, which does not necessarily take place in a closed institution, is a desirable alternative to imprisonment. Offenders, particularly those who plead guilty in order to have their cases dealt with by drug courts, need to have good legal advice on the nature of the process before they consent to an order for their compulsory treatment.

Initial results suggest that drug court programmes are more effective in preventing re-offending than imprisonment and that while they are resource-intensive, cost less than imprisonment in many jurisdictions.[69] The box below details the 12 characteristics of successful drugs courts.

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[67]See, for example, J. Scott Sanford and Bruce A. Arrigo, "Lifting the Cover on Drug Courts: Evaluation Findings and policy Concerns" (2005) 49 *International Journal of Offender Therapy and Comparative Criminology pp.* 239-259 on drug courts in the USA; Australian Institute of Criminology, "Drug Courts: reducing drug-related crime" *AI Crime Reduction Matters* No. 24, 3 June 2004; S. Ely et al. "The Glasgow drug Court in Action: The First Six Months" *Crime and Criminal Justice Research Programme* Research Findings no. 70/2003 of the Scottish Executive; and an online brochure *Drug Treatment Court: Program Information* by Public Safety and Emergency Preparedness Canada at http://www.prevention.gc.ca/en/library/features/dtc/brochure.htm accessed on 30 September 2005.

[68]"What is a Drug Court?" website of the National Association of Drug Court Professionals, http://www.nadcp.org/ accessed January 19, 2007.

[69]J. Scott Sanford "Lifting the Cover on Drug Courts: Evaluation, Findings and Policy Concerns" (2005) 49 *International Journal of Offender Therapy and Comparative Criminology,* pp. 239-259.

UNODC assists the establishment of drug courts

The United Nations Office on Drugs and Crime set up an expert working group to assist in the establishment of drug courts. It identified twelve factors of successful courts:

1. Effective judicial leadership of the multidisciplinary drug court programme team.
2. Strong interdisciplinary collaboration of judge and team members while each also maintains his respective professional independence.
3. Good knowledge and understanding of addiction and recovery by members of the court team who are not health care professionals.
4. Operational manual to ensure consistency of approach and ongoing programme efficiency.
5. Clear eligibility criteria and objective eligibility screening of potential participant offenders.
6. Detailed assessment of each potential participant offender.
7. Fully informed and documented consent of each participant offender (after receiving legal advice) prior to programme participation.
8. Speedy referral of participating offenders to treatment and rehabilitation.
9. Swift, certain and consistent sanctions for programme non-compliance coupled with rewards for programme compliance.
10. Ongoing programme evaluation and willingness to tailor programme structure to meet identified shortcomings.
11. Sufficient, sustained and dedicated programme funding.
12. Changes in underlying substantive and procedural law if necessary or appropriate.

Alternatives for drug users in the criminal justice system

While drug courts are powerful tools for making use of alternatives to imprisonment, there are also other methods to ensure that drug addicts who enter the criminal justice system are not imprisoned unnecessarily. This is important because, despite authorities' best efforts, drugs are often freely available inside prisons.

Courts must bear this reality in mind when they decide whether or not to remand a vulnerable suspect into prison. When imposing sentence on offenders who are addicted, ordinary courts must also consider that drug treatment in the community is more effective than that offered in prison. In marginal cases, this could become a key factor in deciding whether to impose a conditional sentence of imprisonment or a community penalty

in which submitting to drug treatment is a condition of sentence. Conditional release of sentenced prisoners should also make provision for treatment and monitoring of drug addicts after their release.

Who should act?

The alternative strategies for dealing with drug-addicted offenders outside prison all depend on the availability of treatment for addicts in the community. This presupposes a network of *drug counsellors* and treatment centres staffed by specialist *medical practitioners* and *psychologists* to whom they can be referred. These experts need to work closely with key criminal justice actors—the police, prosecutors, judges and probation officers—in providing appropriate treatment for addicted offenders. Clearly, government must play a key role both in providing services and in coordinating them. The volunteer sector can assist too, not least by ensuring that services for drug addicts that are available in the community can be accessed by the criminal justice system, too.

6.4 Mental illness

In general, mentally ill persons are better treated outside than inside prison. Ideally, they should remain in their community, a principle recognized by the United Nations Principles for the Protection of Persons with Mental Illness.[70] Should they require treatment in a mental health facility, it should also be as near to their homes as possible. It should never be a prison.[71]

Mentally ill persons sometimes commit criminal acts, some of which may pose a threat to society. If no other procedures are in place, they end up in prisons, which are not designed to care for them. What can be done to avoid this?

Keeping the mentally ill out of the criminal justice system

Decriminalization of the actions of the mentally ill raises many complicated questions about their criminal responsibility. For the purposes of the handbook, it is important that legal definitions of insanity are broad enough to keep those who are not criminally responsible for their actions from falling under criminal law.

[70]Principle 7.1 of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. G A Res 46/119 of 17 December 1991.
[71]Ibid. Principle 7.2.

The criminal law of most countries draws these distinctions. The difficulty lies in their application. Often an accused person whose mental state is suspect is detained for a period to determine two key issues: first, whether he or she is mentally fit (competent) to stand trial (and able to assist in his or her defence) and whether he or she was criminally responsible for his or her actions. Such individuals should be held in a mental health facility and not in prison while undergoing mental health evaluations.

Diversion of the mentally ill raises wider issues than determining criminal responsibility. Many persons suspected or convicted of criminal offences suffer from mental illness. Authorities may find that the illness is not severe enough to free them from responsibility for their criminal actions, but the mental illness must be taken into account in deciding how to deal with such offenders. The police and the prosecuting authorities should make special efforts to divert persons in this intermediate category from the criminal justice system entirely.

Mental health and prisons

The World Health Organization estimates than some 450 million people worldwide suffer from mental or behavioural disorders. Prison populations have a disproportionately high rate of those suffering from such disorders.

Many of these disorders may be present before admission to prison, and prison may further exacerbate them. Others may develop during imprisonment. Prisons may undermine mental health through factors such as overcrowding, violence, enforced solitude, lack of privacy, and/or insecurity about future prospects.

Good prison management should focus on detecting, preventing and treating mental disorders. For example, the criminal justice system can divert people with mental disorders toward the mental health system. Prisons can provide appropriate treatment and access to acute care in psychiatric wards of general hospitals. They can, among other things, provide psychosocial support, train staff, educate prisoners and ensure that they are included in national mental health plans.

There are a number of benefits to responding to mental health issues in prison. Not only will such a response improve the health and quality of life of the prisoner and the entire prison population, but addressing mental health issues can also relieve some demands on staff forced to deal with prisoners with unrecognized or untreated mental health issues. The community benefits as well, from ongoing interchange between the prison and the broader community through guards, the administration, health professionals and prisoners, before prisoners are released into the community.

Source: "Mental Health and Prisons" Information Sheet, World Health organization (WHO) and the International Committee of the Red Cross (ICRC): http://www.euro.who.int/Document/MNH/WHO_ICRC_InfoSht_MNH_Prisons.pdf

The courts have a particularly important role to play here. The United Nations Principles for the Protection of Persons with Mental Illness encourage the creation of a legislative framework that allows the courts to intervene where the sentenced prisoners or remand detainees are suspected of having a mental illness. Such legislation "may authorize a court or other competent authority, acting on the basis of competent and independent medical advice, to order that such persons be admitted to a mental health facility"[72] instead of being held in prison. The box entitled "Mental health and prisons" outlines some of the related issues.

Alternatives for the mentally ill in the criminal justice system

Mentally ill offenders who remain within the criminal justice system should, as a matter of routine, be given special consideration to determine whether they would not be better placed outside prison. This is an especially an important factor when alternatives to pre-trial detention are being considered. Similarly, a community sentence with a treatment element for the offender's mental illness should be considered in appropriate cases. It should also be recognized that the mental health of offenders may change over time. The mental health of prisoners should be a factor when deciding whether to release them before the completion of their sentences.

Who should act?

The involvement of the following individuals and groups is essential:

States need mental health systems that provide treatment both in closed mental health facilities and in the community.

Psychiatrists and **psychologists** who specialize in the treatment of mental illness need to work closely with the police, prosecutors, judges and probation officers in providing appropriate treatment for mentally ill offenders.

Government must play a key role both in providing and coordinating mental health services.

The **volunteer sector** can also assist, not least by ensuring that the criminal justice system can access services for the mentally ill in the community.

6.5 Women

In all prison systems, women are a minority of the inmates. This may create the impression that there is relatively little need to press for alternatives to imprisonment for them, but that would be false. In many

[72] Ibid. Principle 20.3.

countries, the number of woman prisoners is increasing rapidly. The Seventh United Nations Conference on the Prevention of Crime and the Treatment of Offenders recognized this reality as far back as 1985. It also noted that programmes, services and personnel in prisons remained insufficient to meet the special needs of the increased number of women prisoners. It therefore invited criminal justice authorities "to examine the alternatives to the confinement of female offenders at each stage of the criminal justice process."[73]

Keeping women out of the criminal justice system

As in the case of other groups, *decriminalization* has a particular role to play in reducing the number of women in prison. Some non-violent offences committed mostly by women or that apply specifically to women may be decriminalized. Focusing a decriminalization strategy on such offences will significantly reduce the number of women in prison.

Arrest referral and diversion plans in Scotland tackle issues for female offenders

Scotland has achieved considerable success with arrest referral and diversion from prosecution schemes for women.

Under arrest referrals, such drug-using accused are offered treatment and related services at the point of arrest. It is aimed at people whose offending may be linked to drug use and is entirely voluntary on the offenders' part. In practice, arrest referral workers visit the accused in a custody cell or less often in a court setting, offer advice and information on her addiction and may refer her to the appropriate services.

Arrest referral feeds into Scotland's drug strategy, which is committed to increasing the number of drug users in contact with drug treatment and care services by ten per cent every year until 2005. Drug treatment considerably reduces criminal behaviour, with every dollar spent on treatment saving three dollars of enforcement.

Scotland piloted diversion from prosecution schemes in 18 local authorities for two years from April 1997. In diversion, the accused are referred to social workers or other agencies, where appropriate, rather than routing them through criminal justice proceedings. After reviewing the pilot, Scotland opted to focus the programme on specific groups, including female accused. Beginning in 2003-2004, females represented 48 per cent of all diversion cases.

Source: http://www.scotland.gov.uk/Topics/Justice/criminal/16928/7127
http://www.scotland.gov.uk/Topics/Justice/criminal/16906/6827

[73]Seventh Congress on the Prevention of Crime and the Treatment of Offenders; see G. Alfredsson and K. Tomaševski, *A Thematic Guide to Documents on the Human Rights of Women*, p. 348, Mirtinus Nijhoff Publishers, The Hague, 1995.

Diversion strategies for women operate best when they seek to offer social assistance both to the women and to their families. Many women who come into contact with the criminal justice system are responsible for young children, so that their detention in prison will cause great disruption of those vulnerable lives as well.

Overall crime patterns of women differ from those of men. Women are often used as drug couriers to smuggle drugs across international borders. Although technically guilty of drug trafficking, authorities need to understand the pressures that may have been brought to bear on them to commit the crime and should adjust their sentences accordingly. The previous box provides a practical example of a programme targeted at female offenders.

Alternatives for women in the criminal justice system

The disproportionately severe effects of women's imprisonment require additional efforts in finding alternatives to imprisonment at all stages of the criminal justice process. The techniques at authorities' disposal are similar to those recommended for others. However, courts may find that some alternatives are easier to apply to women than to other groups. For example, a high percentage of women are detained for non-violent offences, thus making it easier to release them conditionally prior to trial.

Courts must bear in mind the position of women in society when considering alternatives to sentences of imprisonment. The requirements of community sentences may require modification to meet their needs and to allow them to cope with responsibilities for child rearing. As women tend to be poorer than men overall, particular attention may need to be focused upon ensuring that, if they default on fines, they do not end up in prison automatically.

Women are often good candidates for early release, be it conditionally or unconditionally. Systems that use amnesties or pardons by the head of state may give them special consideration.

Who should act?

The involvement of the following individuals and groups is essential:

The **criminal justice system** as a whole needs to work to find and implement alternatives to imprisonment for women.

Governmental and **non-governmental organizations** that focus on women's issues should be encouraged to consider the issue of women's imprisonment and to contribute to discussions on how alternatives to it can best be found.

6.6 Over-represented groups

In addition to the groups discussed above, the over-representation of certain other groups in prisons raises the question about whether authorities should pay special attention to providing alternatives for them. In some societies, two of these groups are indigenous minorities and foreign nationals.

Indigenous peoples

In some countries, indigenous minorities are grossly over-represented in the criminal statistics and in prisons. Canada and Australia, for example, have adopted formal strategies for dealing with this issue. They include diversion and the provision of alternatives that make more use of these communities' traditional punishments. The box below provides a concrete example.

Avoiding prison for Aboriginal offenders

The Canadian Criminal Code requires "that all available sanctions other than imprisonment that are reasonable in the circumstances, should be considered for all offenders, with particular reference to the circumstances of Aboriginal offenders."

This established the principle of imprisonment as last resort, particularly for Aboriginal offenders, a group that is over-represented in prisons. While comprising some three per cent of the Canadian population, Aboriginal persons represent 15 and 17 per cent, respectively, of the population of provincial and federal correctional institutions. In some provincial correctional facilities in the country's western regions, Aboriginal persons compose 60 to 70 per cent of institutional populations.

This sentencing principle was reaffirmed by the Supreme Court of Canada in the case of R. v. Gladue [1999] 1 S.C.R. 688. Subsequently, an Aboriginal Persons Court was created in Toronto, Ontario.

The Ontario Court of Justice deals exclusively with bail hearings, remands, trials and sentencing of Aboriginal offenders. Convening twice a week, the court deals with the cases of Aboriginal persons charged in downtown Toronto. The judge, Crown (prosecutors), defence lawyers, court clerks, and court workers are all Aboriginal. In processing the cases, the court makes every attempt to explore all possible sentencing options and alternatives to imprisonment.

Source: C. T. Griffiths. 2006. *Canadian Criminal Justice: A Primer*, third edition. Toronto: Thomson Nelson. Forthcoming; Criminal Lawyers' Association, "Gladue (Aboriginal Persons) Court, Ontario Court of Justice—Old City Hall, Fact Sheet." Retrieved from www.criminallawyers.ca/gladue.htm.

Foreign nationals

Foreign nationals make up a large percentage of the prison population of several countries. For various reasons, it is sometimes assumed too easily that alternatives to imprisonment are not applicable to them. There may be an assumption, for example, that all foreign prisoners present an escape risk and that therefore none can ever be granted conditional release. Such blanket assumptions should be avoided; each case should be treated on its particular characteristics.

7. Toward a coherent strategy

This handbook has demonstrated how to develop alternatives to imprisonment both to keep people out of the criminal justice system entirely, as well as how to introduce changes at every level of the system to ensure the most sparing use of imprisonment. To achieve the best results possible, authorities must put together a coherent strategy that focuses and constantly refocuses attention and resources on using alternatives to imprisonment to reduce the prison population. A number of countries in recent years have pursued such strategies and succeeded in cutting their overall prison populations. Two such examples are provided below.

Community service orders make an impact

A country of southern Africa, Malawi shares with its neighbours the problems of poverty, underdevelopment, food shortages and HIV/AIDS, as well as social and economic inequities. These circumstances foster some of the highest crime rates in the world.

To help deal with prison overcrowding, Malawi instituted a community service order plan in 2000. By late September 2004, Malawi had placed 5,225 offenders on community service orders. They performed 838,000 hours of work, and completed 87 per cent of the tasks assigned.

For offenders who completed their community service obligation, the rate of re-offending fell to 0.25 per cent, or just one of out of every 400 offenders. In addition, the Malawi government saved $227,717 by using community service rather than imprisonment.

Reforms reduce prison populations

Finland reduced its prison population by adopting a coherent long-term reform policy. In the 1960s, Finnish authorities realized its prison numbers, at 150 prisoners to every 100,000 inhabitants, were disproportionately high compared to its Scandinavian neighbours, which had just 50 to 70 prisoners to every 100,000 inhabitants. Politicians reached a consensus that they should and could deal with prison overcrowding. Systematic legislative reforms aimed at releasing prisoners began after the mid-1960s, and continued up through the mid-1990s.

In the 1960s, Finland reduced the number of prisoners through an amnesty; by decriminalizing public drunkenness; and by restricting the use of imprisonment as a default penalty for unpaid fines. Next, Finland lowered the penalties for traditional property offences and drunken driving, by strengthening the role of non-custodial sanctions and by extending the use of early release. It raised fines in order to provide credible alternatives to short-term prison sentences. It extended the use of conditional imprisonment and expanded the system of early release by, for example, lowering the minimum time to be served before a prisoner is eligible for parole to 14 days from six months. Finland abandoned automatic increases in sentences for offenders with criminal records. It restricted the use of unconditional sentences for young offenders, and, in the 1990s, extended the scope of community sanctions further by introducing community service. These reforms contributed to a systematic long-term decline in prison figures. By the 1990s, Finland had fallen to the bottom of the west European list of prisoners per 100,000 inhabitants, down from its top slot in the 1970s.

The Finnish experience proves that cutting prison numbers is possible. Based on their experience, the Finns stress the importance of the political will to act and the development of a systematic strategy that employs the means available at different stages of the criminal justice process. They also underline the value of consensus-based decision-making and extensive participation of different interest groups in legal drafting. Such an approach makes it less likely that a single high-profile case will galvanize public opinion and result in short-term criminal justice legislation. A reasonable, well-informed, and high-quality media also advances this agenda. Finland found that cooperation between the judiciary, practitioners, police and the research community, as well as the organized exchange of information and different training courses and seminars proved valuable in implementing law reforms. The Finns found that a humane and rational criminal policy is promoted by an in-depth understanding of the nature of the crime problem, the effective functioning of the criminal justice system, and general strategies of crime prevention.*

*For more information: Tapio Lappi-Seppälä, "Sentencing and Punishment in Finland: The Decline of the Repressive Ideal." In Michael Tonry and Richard Frase (eds.) *Sentencing and Sanctions in Western Countries*, New York: Oxford University Press, 2001.

It is not possible to prescribe a formula that will work to reduce the prison populations in all societies as such processes of change are highly complex. Any coherent strategy for reducing the prison population would include the following essential factors:

7.1 Knowledge base

Authorities need sufficient information about the entire range of criminal justice activities that involve imprisonment and its alternatives as well as a careful analysis of the prison population. They must have readily available answers to questions like these:

- What are the social characteristics of persons held in prison?
- For what offences are they being held, if any?
- For how long are they being held awaiting trial?
- How long are sentences for various offences?
- What are the costs of imprisonment?

A similar analysis of alternatives to imprisonment must complement this information. If alternatives are not yet in force, and authorities cannot therefore answer questions about their applicability or cost, they should make careful use of projections and hypothetical costs for the use of certain alternatives.

7.2 Political initiative

Politicians should use this information base to introduce and develop a clear policy on alternatives to imprisonment that will reduce the prison population. Ideally, leading politicians and senior policy-makers will share an ideological commitment to reducing the prison population and to exploring alternatives to imprisonment. To gain the public's backing for this policy, authorities need to raise awareness of the shortcomings and costs of imprisonment and the advantages, morally, practically and financially, of alternatives to it.

7.3 Legislative reform

To develop a strategy on alternatives, authorities need to review legislation to ensure that, unless it is essential to do so, the law does not criminalize conduct and unnecessarily contribute to the prison population.

Authorities should assure that a legal framework for alternatives is in place at every level and that there are statutory requirements to implement it.

The law should mandate a preference for alternatives over imprisonment, with imprisonment considered the option of last resort.

New legislation is not self-implementing and should be accompanied by seminars and training programmes designed to facilitate implementation. They should first target judges, but then should include all those who will be involved in implementing newly legislated alternatives.

7.4 Infrastructure and resources

The creation of some, but not all, alternatives to imprisonment requires new resources. Authorities should carefully cost project requirements and consider the need for new resources when introducing new legislation.

To implement community sentences and treatment-based alternatives, it is particularly important that authorities make sure the necessary infrastructure is in place and earmark the resources required, not only for its start-up but also for its continued operation.

In implementing community sentences, the state can and should enter into partnerships with community organizations. Such partnerships are not only inherently desirable, but may also provide crucial help where finances might otherwise constrain the introduction of alternatives.

The state may also seek to reduce the prison population indirectly by providing resources for initiatives outside the criminal justice system. Such initiatives should seek to address the conditions that cause crime in society. They might also encourage less use of imprisonment by providing non-penal programmes of treatment within the welfare or health systems, which would encourage diversion.

7.5 Net-widening

Enthusiasm for community sentences and treatment-based options can lead to their use as an addition to, rather than instead of, imprisonment. States must ensure that they keep their focus firmly on the overall objective of creating alternatives to imprisonment that reduce the prison population.

7.6 Monitoring

Authorities must continually review the various strategies adopted to implement alternatives. One approach is to set deadlines for specific benchmarks so that they can celebrate success and take note of failures. Where benchmarks are not met, they should take swift remedial action. They must ensure alternatives are implemented correctly to maintain their credibility.

They should pay attention to motivating offenders to take part in community sentences, not just in order to avoid imprisonment but as an opportunity to make life better for themselves. Community support for alternatives will help produce a climate of cooperation and mutual trust where this can best be done.

7.7 Promotion of alternatives

Research has shown that while the public often appears to be highly punitive when asked about the punishment of offenders in general, it becomes significantly less so when given more detailed information.

Authorities have the responsibility of putting the advantages of an overall strategy that uses alternatives to reduce imprisonment at the forefront of public understanding.[74] Various strategies can achieve this. The state can begin by making its own knowledge base more widely available so that the public becomes aware of the costs of imprisonment and the advantages that alternatives may hold. Public education is essential.

In publicising and promoting the use of alternatives, the state should enter into partnerships with organizations of professionals working in the criminal justice sector, and with non-governmental organizations that are active in the field of crime and punishment. The state should focus upon gaining the support of victims' groups by showing them how alternatives to imprisonment hold out advantages for victims as well.

The state must carefully assess public opinion on the desirability of alternatives.

Research has shown that while the public often appears to be highly punitive when asked about the punishment of offenders in general, it becomes significantly less so when given more detailed information.[75]

The state should develop a strategy for placing sufficient information in the public domain so that members of the public can make an informed

[74]See in general, Lappi-Seppala, T. (2003) *"Enhancing the Community Alternatives—Getting the Measures Accepted and Implemented"* in *UNAFEI Annual Report for 2002* and *Resource Material Series No. 61,* Fuchu, Japan. pp. 88-97, http://www.unafei.or.jp/english/pdf/PDF_rms_all/no61.pdf

[75]Mike Hough and Julian V. Roberts, "Sentencing trends in Britain: Public knowledge and public opinion" (1999) 1 *Punishment and Society* 11-26; Julian V. Roberts, et al, *Penal Populism and Public Opinion: Lessons from five countries*, Oxford University Press: Oxford and New York, 2003.

contribution to the debate about alternatives. This must include information about current sentencing practices, for members of the public are often uninformed about sentences in general and aware of only a few atypical cases.

The state should conduct sophisticated public opinion research to counter claims that the public is inherently punitive. Senior politicians and civil society leaders must shape public opinion rather than follow it, for their influence is potentially very great.

7.8 The media and alternatives to imprisonment

The various media have a crucial role to play in informing the public about attitudes to imprisonment. It is necessary that they be carefully briefed about the overall efficacy of alternatives so that they are able to put occasional failures into a broader perspective context. The relevant authorities should cultivate relationships with the media over a long period by updating them about developments in the field with information in an accessible, non-technical form. If some journalists propose harsher punishments such as the extended use of imprisonment, for example, authorities should respond by asking them to cost their proposals and spell out what extra resources would be required.

7.9 Justice and equality

Authorities should refrain from presenting the benefits of alternatives only in terms of potential savings to the state. They must also emphasize the justice of community-based alternatives. It is important, too, that they focus on the principle of equality to avoid the misperception that these alternatives are available only to a selected few.

Conclusion

Because imprisonment has a number of serious disadvantages, the consensus represented by United Nations standards and norms is to urge member states to use alternatives to imprisonment to reduce prison populations. United Nations standards and norms advocate the use of imprisonment only as a last resort and that its use be as sparing as possible.

Alternatives to imprisonment are often more effective at achieving important public safety objectives, such as greater security for the population, than imprisonment. Properly designed and implemented, they may infringe less on human rights while costing less in the short and/or long term. This handbook has focused on the alternatives to imprisonment throughout the criminal justice process that are consistent with United Nations standards and norms.

A first strategy is keeping offenders out of the criminal justice system entirely. Not all socially undesirable conduct must be classified as a crime or dealt with via the criminal justice process; decriminalization legally redefines conduct once regarded as a crime so that it is a crime no longer. Next is diversion, in which options for dealing with offenders by sending them to treatment or other programmes rather than formally adjudicating them in the criminal justice system.

At each stage of the criminal justice process (pre-trial, pre-conviction, pre-sentencing, sentencing and early release), the handbook has examined the issues surrounding imprisonment, described in detail the types of alternatives that are available, and outlined the infrastructure needed to

make these alternatives a realistic option, including identifying the key players who need to act to make these changes happen. Throughout these sections are examples of alternatives at work.

At the pre-trial stage, the detention of persons presumed innocent is a particularly severe infringement of the right to liberty. Only in extremely limited circumstances is such detention justified. The handbook has provided examples of alternatives to pre-trial detention that address both public safety and human rights concerns. Some of the options discussed included releasing an accused person and ordering them to carry out, or to avoid, certain activities. These orders might include requirements such as appearing in court on a given day or remaining at a specific address as well as many other possibilities.

At the sentencing stage, the handbook has suggested a careful examination of each case to determine whether a prison sentence is required at all. If so, the handbook has further suggested that sentences be for the minimum period of imprisonment that meets the objective for which imprisonment is being imposed. The handbook has also discussed in depth a number of alternatives to imprisonment, including, but not limited to, verbal sanctions, conditional discharge, status penalties and community services orders as suggested by the Tokyo Rules.

Early release also has considerable practical importance in reducing prison numbers and in ensuring that imprisonment is used as sparingly as possible. The handbook has examined various alternatives to imprisonment including various forms of parole, remission and pardon, as well as furloughs and halfway houses.

The handbook has also focused upon specific categories of offenders who may be especially vulnerable to the negative impact of prisons, such as children, women, the mentally ill and those who commit drug-related offences, to examine what particular alternatives to imprisonment might apply and be most appropriate for these special groups.

Finally, the handbook has provided a framework to help readers develop a coherent strategy to reducing the prison population. It is hoped that the materials in this handbook will assist governments and communities in their consideration and implementation of alternatives to imprisonment.

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HEALTHY SOCIAL ACTIVITES (HSA)

Healthy Social Activities (formerly called "Community Support") allow you to gain sober support in the community in areas that you value as well as build connections and healthy relationships.

Note: All HSA must be done separately from community service hours, sanctioned hours, and productivity.
You will need HSAs pre-approved by your case manager in order to get credit.

Art

- Path with Art
- Art classes
- Knitting groups
- Crafting classes

Education

- Seattle Public Library: writing circles, talk time
- Book readings at bookstores
- GED or college (in person)
- Vocational training
- Parenting classes
- Peer training
- Volunteering and Community Service (separate from productivity and your overall 24 CSHs)

Spiritual, Religious, Cultural, Healing, emotional wellbeing

- Attending church, church events, bible study
- Pow wow, longhouse events, temple, Sweat lodges
- Yoga, meditations, and mindfulness groups
- Mental Health Counseling

Support Groups

- DV support
- Divine Alternative for Dads (D.A.D.S)
- Organization for Prostitution Survivors (OPS
- Grief and Loss Support

Exercise

- Sports leagues
- Hiking groups
- Walking for fitness with a partner or group
- Gym workouts with a partner or group exercise
- Dog Park with your dog

Recovery Support

- Sponsor/mentor work
- Sober support groups
- 12 Step BBQs/events
- Recovery Café
- All 12 step Sober Supports or The Shakedown also count for HSA

Other

- If you have ideas not listed, please discuss with your case manager

NOTE: In all instances, HSAs must be additional hours that are not "double dipped" with the 24 Community Service Hours required to graduate or the 20 hours of weekly productivity needed on Phase 5.

Healthy Social Activities (HSA) Log

Name: _____

Date	**Activity Description** (Example – Art class or Yoga class)	**Name of Location** (Example – where you did the activity)	**Time Spent** (Example – 1 hr, 2.5 hrs)	**How is this verified?** (Example- photo, be ready to summarize what you did, answer questions)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. NICHOLAS PETER BLAZINA, Petitioner.	No. 89028-5 (consol. w/No. 89109-5) En Banc
STATE OF WASHINGTON, Respondent, v. MAURICIO TERRENCE PAIGE-COLTER, Petitioner.	Filed MAR 12 2015

MADSEN, C.J.—At sentencing, judges ordered Nicholas Blazina and Mauricio Paige-Colter to pay discretionary legal financial obligations (LFOs) under RCW 10.01.160(3). The records do not show that the trial judges considered either defendant's ability to pay before imposing the LFOs. Neither defendant objected at the time. For the first time on appeal, however, both argued that a trial judge must make an individualized

inquiry into a defendant's ability to pay and that the judges' failure to make this inquiry warranted resentencing. Citing RAP 2.5, the Court of Appeals declined to reach the issue because the defendants failed to object at sentencing and thus failed to preserve the issue for appeal.

Although a defendant has the obligation to properly preserve a claim of error, an appellate court may use its discretion to reach unpreserved claims of error consistent with RAP 2.5. In this case, we hold that the Court of Appeals did not err in declining to reach the merits. However, exercising our own RAP 2.5 discretion, we reach the merits and hold that a trial court has a statutory obligation to make an individualized inquiry into a defendant's current and future ability to pay before the court imposes LFOs. Because the trial judges failed to make this inquiry, we remand to the trial courts for new sentence hearings.

FACTS

A. *State v. Blazina*

A jury convicted Blazina of one count of second degree assault, and the trial court sentenced him to 20 months in prison. The State also recommended that the court impose a $500 victim penalty assessment, $200 filing fee, $100 DNA (deoxyribonucleic acid) sample fee, $400 for the Pierce County Department of Assigned Counsel, and $2,087.87 in extradition costs. Blazina did not object, and the trial court accepted the State's recommendation. The trial court, however, did not examine Blazina's ability to pay the discretionary fees on the record. Instead, Blazina's judgment and sentence included the following boilerplate language:

> 2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS The court has considered the total amount owing, the defend[ant]'s past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753

Clerk's Papers at 29.

Blazina appealed and argued that the trial court erred when it found him able to pay his LFOs. The Court of Appeals declined to consider this claim because Blazina "did not object at his sentencing hearing to the finding of his current or likely future ability to pay these obligations." *State v. Blazina*, 174 Wn. App. 906, 911, 301 P.3d 492 (2013). We granted review. *State v. Blazina*, 178 Wn. App. 1010, 311 P.3d 27 (2013).

B. *State v. Paige-Colter*

The State charged Paige-Colter with one count of first degree assault and one count of first degree unlawful possession of a firearm. A jury convicted Paige-Colter as charged. The trial court imposed the State's recommended 360-month sentence of confinement. The State also recommended that the court "impose . . . standard legal financial obligations, $500 crime victim penalty assessment, $200 filing fee, $100 fee for the DNA sample, $1,500 Department of Assigned Counsel recoupment . . . [, and] restitution by later order." Paige-Colter Verbatim Report of Proceedings (Paige-Colter VRP) (Dec. 9, 2011) at 6. Paige-Colter made no objection. The trial court accepted the State's recommendation without examining Paige-Colter's ability to pay these fees on the record. Paige-Colter's judgment and sentence included boilerplate language stating the court considered his ability to pay the imposed legal fees.

Paige-Colter appealed and argued that the trial court erred when it imposed discretionary LFOs without first making an individualized inquiry into his ability to pay. The Court of Appeals concluded that Paige-Colter waived these claims by not objecting below. *State v. Paige-Colter*, noted at 175 Wn. App. 1010, 2013 WL 2444604, at *1. We granted review on this issue and consolidated the case with *Blazina*. *State v. Paige-Colter*, 178 Wn.2d 1018, 312 P.3d 650 (2013).

ANALYSIS

A defendant who makes no objection to the imposition of discretionary LFOs at sentencing is not automatically entitled to review.[1] It is well settled that an "appellate court may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a). This rule exists to give the trial court an opportunity to correct the error and to give the opposing party an opportunity to respond. *State v. Davis*, 175 Wn.2d 287, 344, 290 P.3d 43 (2012), *cert. denied*, ___ U.S. ___, 134 S. Ct. 62, 187 L. Ed. 2d 51 (2013). The text of RAP 2.5(a) clearly delineates three exceptions that allow an appeal as a matter of right. *See* RAP 2.5(a).[2]

Blazina and Paige-Colter do not argue that one of the RAP 2.5(a) exceptions applies. Instead, they cite *State v. Ford*, 137 Wn.2d 472, 477-78, 973 P.2d 452 (1999)

[1] The State argues that the issue is not ripe for review because the proper time to challenge the imposition of an LFO arises when the State seeks to collect. Suppl. Br. of Resp't (Blazina) at 5-6. We disagree. "'Three requirements compose a claim fit for judicial determination: if the issues are primarily legal, do not require further factual development, and the challenged action is final.'" *State v. Bahl*, 164 Wn.2d 739, 751, 193 P.3d 678 (2008) (quoting *First United Methodist Church v. Hr'g Exam'r*, 129 Wn.2d 238, 255-56, 916 P.2d 374 (1996)). A challenge to the trial court's entry of an LFO order under RCW 10.01.160(3) satisfies all three conditions.

[2] By rule, "a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right." RAP 2.5(a).

and argue that "it is well established that illegal or erroneous sentences may be challenged for the first time on appeal," suggesting that they may challenge unpreserved LFO errors on appeal as a matter of right. Suppl. Br. of Pet'r (Blazina) at 3. In *State v. Jones*, 182 Wn.2d 1, 338 P.3d 278 (2014), a recent unanimous decision by this court, we said that *Ford* held unpreserved sentencing errors "may be raised for the first time upon appeal because sentencing can implicate fundamental principles of due process if the sentence is based on information that is false, lacks a minimum indicia of reliability, or is unsupported in the record." *Jones*, 182 Wn.2d at 6. However, we find the exception created by *Ford* does not apply in this case.

Unpreserved LFO errors do not command review as a matter of right under *Ford* and its progeny. As stated in *Ford* and reiterated in our subsequent cases, concern about sentence conformity motivated our decision to allow review of sentencing errors raised for the first time on appeal. *See Ford*, 137 Wn.2d at 478. We did not want to "'permit[] widely varying sentences to stand for no reason other than the failure of counsel to register a proper objection in the trial court.'" *Id.* (quoting *State v. Paine*, 69 Wn. App. 873, 884, 850 P.2d 1369 (1993)). Errors in calculating offender scores and the imposition of vague community custody requirements create this sort of sentencing error and properly fall within this narrow category. *See State v. Mendoza*, 165 Wn.2d 913, 919-20, 205 P.3d 113 (2009) (prior convictions for sentencing range calculation); *Ford*, 137 Wn.2d at 475-78 (classification of out of state convictions for offender score calculation); *State v. Bahl*, 164 Wn.2d 739, 743-45, 193 P.3d 678 (2008) (community custody conditions of sentence). We thought it justifiable to review these challenges

raised for the first time on appeal because the error, if permitted to stand, would create inconsistent sentences for the same crime and because some defendants would receive unjust punishment simply because his or her attorney failed to object.

But allowing challenges to discretionary LFO orders would not promote sentencing uniformity in the same way. The trial court must decide to impose LFOs and must consider the defendant's current or future ability to pay those LFOs based on the particular facts of the defendant's case. *See* RCW 10.01.160(3). The legislature did not intend LFO orders to be uniform among cases of similar crimes. Rather, it intended each judge to conduct a case-by-case analysis and arrive at an LFO order appropriate to the individual defendant's circumstances. Though the statute mandates that a trial judge consider the defendant's ability to pay and, here, the trial judges erred by failing to consider, this error will not taint sentencing for similar crimes in the future. The error is unique to these defendants' circumstances, and the Court of Appeals properly exercised its discretion to decline review.

Although the Court of Appeals properly declined discretionary review, RAP 2.5(a) governs the review of issues not raised in the trial court for all appellate courts, including this one. While appellate courts normally decline to review issues raised for the first time on appeal, *see Roberson v. Perez*, 156 Wn.2d 33, 39, 123 P.3d 844 (2005), RAP 2.5(a) grants appellate courts discretion to accept review of claimed errors not appealed as a matter of right.[3] *State v. Russell*, 171 Wn.2d 118, 122, 249 P.3d 604 (2011). Each

[3] RAP 2.5(a) states, "The appellate court may refuse to review any claim of error which was not raised in the trial court."

appellate court must make its own decision to accept discretionary review. National and local cries for reform of broken LFO systems demand that this court exercise its RAP 2.5(a) discretion and reach the merits of this case.

At a national level, organizations have chronicled problems associated with LFOs imposed against indigent defendants. These problems include increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration. In 2010, the American Civil Liberties Union issued a report that chronicled the problems associated with LFOs in five states—including Washington—and recommended reforms to state and to local officials. AM. CIVIL LIBERTIES UNION, IN FOR A PENNY: THE RISE OF AMERICA'S NEW DEBTORS' PRISONS (2010) (ACLU), *available at* https://www.aclu.org/files/assets/InForAPenny_web.pdf. That same year, the Brennan Center for Justice at New York University School of Law published a report outlining the problems with criminal debt, most notably the impediment it creates to reentry and rehabilitation. ALICIA BANNON, MITALI NAGRECHA & REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY (2010), *available at* http://www.brennancenter.org/sites/default/files/legacy /Fees%20and%20Fines%20FINAL.pdf. Two years later, the Brennan Center followed up with "A Toolkit for Action" that proposed five specific reforms to combat the problems caused by inequitable LFO systems. ROOPAL PATEL & MEGHNA PHILIP, BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A TOOLKIT FOR ACTION (2012), *available at* http://www.brennancenter.org/sites/default/files/legacy/publications /Criminal%20Justice%20Debt%20Background%20for%20web.pdf. As part of its second

proposed reform, the Brennan Center advocated that courts must determine a person's ability to pay before the court imposes LFOs. *Id.* at 14.

Washington has contributed its own voice to this national conversation. In 2008, the Washington State Minority and Justice Commission issued a report that assessed the problems with the LFO system in Washington. KATHERINE A. BECKETT, ALEXES M. HARRIS & HEATHER EVANS, WASH. STATE MINORITY & JUSTICE COMM'N, THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE (2008) (WASH. STATE MINORITY & JUSTICE COMM'N), *available at* http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf. This conversation remains important to our state and to our court system.

As amici[4] and the above-referenced reports point out, Washington's LFO system carries problematic consequences. To begin with, LFOs accrue interest at a rate of 12 percent and may also accumulate collection fees when they are not paid on time. RCW 10.82.090(1); Travis Stearns, *Legal Financial Obligations: Fulfilling the Promise of* Gideon *by Reducing the Burden*, 11 SEATTLE J. SOC. JUST. 963, 967 (2013). Many defendants cannot afford these high sums and either do not pay at all or contribute a small amount every month. WASH. STATE MINORITY & JUSTICE COMM'N, *supra*, at 21. But on average, a person who pays $25 per month toward their LFOs will owe the state more 10 years after conviction than they did when the LFOs were initially assessed. *Id.* at 22.

[4] This court received a joint amici curiae brief from the Washington Defender Association, the American Civil Liberties Union of Washington, Columbia Legal Services, the Center for Justice, and the Washington Association of Criminal Defense Lawyers.

Consequently, indigent offenders owe higher LFO sums than their wealthier counterparts because they cannot afford to pay, which allows interest to accumulate and to increase the total amount that they owe. *See id.* at 21-22. The inability to pay off the LFOs means that courts retain jurisdiction over impoverished offenders long after they are released from prison because the court maintains jurisdiction until they completely satisfy their LFOs. *Id.* at 9-11; RCW 9.94A.760(4) ("For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime."). The court's long-term involvement in defendants' lives inhibits reentry: legal or background checks will show an active record in superior court for individuals who have not fully paid their LFOs. ACLU, *supra*, at 68-69. This active record can have serious negative consequences on employment, on housing, and on finances. *Id.* at 69. LFO debt also impacts credit ratings, making it more difficult to find secure housing. WASH. STATE MINORITY & JUSTICE COMM'N, *supra*, at 43. All of these reentry difficulties increase the chances of recidivism. *Id.* at 68.

Moreover, the state cannot collect money from defendants who cannot pay, which obviates one of the reasons for courts to impose LFOs. *See* RCW 9.94A.030. For example, for three quarters of the cases sentenced in the first two months of 2004, less than 20 percent of LFOs had been paid three years after sentencing. WASH. STATE MINORITY & JUSTICE COMM'N, *supra*, at 20.

Significant disparities also exist in the administration of LFOs in Washington. For example, drug-related offenses, offenses resulting in trial, Latino defendants, and male defendants all receive disproportionately high LFO penalties. *Id.* at 28-29. Additionally, counties with smaller populations, higher violent crime rates, and smaller proportions of their budget spent on law and justice assess higher LFO penalties than other Washington counties. *Id.*

Blazina and Paige-Colter argue that, in order to impose discretionary LFOs under RCW 10.01.160(3), the sentencing judge must consider the defendant's individual financial circumstances and make an individualized inquiry into the defendant's current and future ability to pay. Suppl. Br. of Pet'r (Blazina) at 8. They also argue that the record must reflect this inquiry. We agree. By statute, "[t]he court *shall not* order a defendant to pay costs unless the defendant is or will be able to pay them." RCW 10.01.160(3) (emphasis added). To determine the amount and method for paying the costs, "the court *shall* take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." *Id.* (emphasis added).

As a general rule, we treat the word "shall" as presumptively imperative—we presume it creates a duty rather than confers discretion. *State v. Bartholomew*, 104 Wn.2d 844, 848, 710 P.2d 196 (1985). Here, the statute follows this general rule. Because the legislature used the word "may" 11 times and the word "shall" eight times in RCW 10.01.160, we hold that the legislature intended the two words to have different meanings, with "shall" being imperative.

Practically speaking, this imperative under RCW 10.01.160(3) means that the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay. Within this inquiry, the court must also consider important factors, as amici suggest, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay.

Courts should also look to the comment in court rule GR 34 for guidance. This rule allows a person to obtain a waiver of filing fees and surcharges on the basis of indigent status, and the comment to the rule lists ways that a person may prove indigent status. GR 34. For example, under the rule, courts must find a person indigent if the person establishes that he or she receives assistance from a needs-based, means-tested assistance program, such as Social Security or food stamps. *Id.* (comment listing facts that prove indigent status). In addition, courts must find a person indigent if his or her household income falls below 125 percent of the federal poverty guideline. *Id.* Although the ways to establish indigent status remain nonexhaustive, *see id.*, if someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs.

CONCLUSION

At sentencing, judges ordered Blazina and Paige-Colter to pay LFOs under RCW 10.01.160(3). The records, however, do not show that the trial judges considered either defendant's ability to pay before imposing the LFOs. The defendants did not object at

sentencing. Instead, they raised the issue for the first time on appeal. Although appellate courts will normally decline to hear unpreserved claims of error, we take this occasion to emphasize the trial court's obligation to consider the defendant's ability to pay.

We hold that RCW 10.01.160(3) requires the record to reflect that the sentencing judge made an individualized inquiry into the defendant's current and future ability to pay before the court imposes LFOs. This inquiry also requires the court to consider important factors, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay. Because the records in this case do not show that the sentencing judges made this inquiry into either defendant's ability to pay, we remand the cases to the trial courts for new sentence hearings.

Madsen, C.J.

WE CONCUR:

Johnson, J.

Wiggins, J.

González, J.

Gordon McCloud, J.

J. M. Johnson, J.P.T.

No. 89028-5

FAIRHURST, J. (concurring in the result)—I agree with the majority that RCW 10.01.160(3) requires a sentencing judge to make an individualized determination into a defendant's current and future ability to pay before the court imposes legal financial obligations (LFOs). I also agree that the trial judges in these cases did not consider either defendant's ability to pay before imposing LFOs. Because the error was unpreserved, I also agree that we must determine whether it should be addressed for the first time on appeal. RAP 2.5(a).

I disagree with how the majority applies RAP 2.5(a). RAP 2.5(a) contains three exceptions on which unpreserved errors can be raised for the first time on appeal. While the majority does not indicate which of the three exceptions it is applying to reach the merits, it is likely attempting to use RAP 2.5(a)(3), "manifest error affecting a constitutional right."[1] However, the majority fails to apply the three part test from *State v. O'Hara*, 167 Wn.2d 91, 98-100, 217 P.3d 756 (2009), that established what an appellant must demonstrate for an appellate court to reach an unpreserved error under RAP 2.5(a)(3).

[1]The other two exceptions, "(1) lack of trial court jurisdiction" and "(2) failure to establish facts upon which relief can be granted," are not applicable. RAP 2.5(a).

In *O'Hara*, we found that to meet RAP 2.5(a)(3) and raise an error for the first time on appeal, an appellant must demonstrate the error is manifest and the error is truly of constitutional dimension. *Id.* at 98. Next, if a court finds a manifest constitutional error, it may still be subject to a harmless error analysis. *Id.*

Here, the error is not constitutional in nature and thus the unpreserved error cannot be reached under a RAP 2.5(a)(3) analysis. In analyzing the asserted constitutional interest, we do not assume the alleged error is of constitutional magnitude but instead look at the asserted claim and assess whether, if correct, it implicates a constitutional interest as compared to another form of trial error. *Id.*

The trial court judges in *Blazina* and *Paige-Colter* did not inquire into the defendants' ability to pay LFOs, which violates RCW 10.01.160(3). RCW 10.01.160(3) provides:

> The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

Failing to determine a defendant's ability to pay LFOs violates the statute but does not implicate a constitutional right.

Although the unpreserved error does not meet the RAP 2.5(a)(3) standard from *O'Hara*, I would hold that this error can be reached by applying RAP 1.2(a),

which states that the "rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits." RAP 1.2(a) is rarely used, but this is an appropriate case for the court to exercise its discretion to reach the unpreserved error because of the widespread problems, as stated in the majority, associated with LFOs imposed against indigent defendants. Majority at 6.

The consequences of the State's LFO system are concerning, and addressing where courts are falling short of the statute will promote justice. In *State v. Aho*, 137 Wn.2d 736, 740-41, 975 P.2d 512 (1999), we held that the supreme court "has the authority to determine whether a matter is properly before the court, to perform those acts which are proper to secure fair and orderly review, and to waive the rules of appellate procedure when necessary 'to serve the ends of justice.'" (quoting RAP 1.2(c)). I agree with the majority that RCW 10.01.160(3) requires sentencing judges to take a defendant's individual financial circumstances into account and make an individual determination into the defendant's current and future ability to pay. In order to ensure that indigent defendants are treated as the statute requires, we should reach the unpreserved error.

For the foregoing reasons, I concur in the result only.

Fairhurst. J.

Stephens. J.

An Analysis of Court Imposed Monetary Sanctions in Seattle Municipal Courts, 2000-2017.

Report Prepared For:

The City of Seattle, Office for Civil Rights
7/28/2020

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I. Lists of Tables and Figures

II. Introduction

While the laws, policies and court practices vary, each state in the United States imposes some sort of scheme to sentence law violators to justice system fees, fines related to specific offenses, and restitution to directly or indirectly reimburse victims, in addition to a host of costs related to non-full payment. Many states have legislatively established "mandatory" fines or fees, where judges have no discretion in whether or not to sentence people, even those deemed indigent.[i] Over the past twelve years, research has emerged to outline local and state level practices, documenting the varying dimensions of court mechanisms used to assess the costs, monitor repayment and non-payment, and punish people who do not pay.[ii] This research has examined the consequences of court imposed fines and fees on the lives and families of people who owe the debt, the practices by which local jurisdictions collect the penalties, and the disparate effects of monetary sanctions for youth, communities of color and people who are poor.[iii] Research has also begun to give attention to justice practices related to the imposition of fines and fees, such as the privatization of services and products within justice systems and state revenue generation foci and practices.[iv]

In this report, we use an expansive definition of legal financial obligations (LFO), which is inclusive of all financial debts imposed by a court because of a criminal charge or infraction. We use the term LFO interchangeably with the term of monetary sanctions. The definition we use is broader than typical definitions that narrowly focus on criminal cases only. However, in the eyes of debtors, debt arising from both traffic and non-traffic infractions can have similar consequences as can debt arising from criminal cases. Our goal in this report is to capture the *total* impacts of the broad system of monetary sanctions in Seattle. While our analysis focuses on data from the Seattle Municipal Court, this system depends on the actions wide range of institutions, including the court itself, the Seattle Police Department, the City Attorney's Office, and others. As such, our results and interpretations may differ from those that use more narrow criteria to define legal financial obligations. Our analyses treat LFOs as inclusive of all monetary sanctions that individuals may incur because of cases processed in Seattle Municipal Court.

Legal Financial Obligations, as defined in Washington State statute include the fines, fees, costs imposed by the court as the result of a criminal convictions. Washington State's Legal Financial Obligations are mandated by RCW 9.94A.760.[v] Specific fines and fees are embedded throughout the RCW. The mandatory LFOs include: a Victim Penalty Assessment (VPA) which imposes $500 for each felony or gross misdemeanor conviction and a $250 fee for each misdemeanor conviction (RCW 7.68.035). The DNA Collection Fee imposes a one-time fee of $100 for a crime specified in RCW 43.43.754 and must be sentenced (this is not mandatory for persons with mental health conditions). Furthermore, restitution shall be ordered when a person is convicted of a felony offense resulting in injury, damage or loss of property. Some LFOs are crime specific fines and are mandatory based on type of offense (e.g., sex offense). Other fees and costs such as, criminal filing fee, conviction fee or jury fee shall not be imposed if a person is deemed indigent or has a mental health condition.

We have been asked by the Seattle Office for Civil Rights to conduct an analysis of the sentencing and collection of fines and fees by the Seattle Municipal Court (SMC). It is

important to note that as national, as well as Washington specific research, has shown, the sentencing and citation of fines and fees is just one discretionary point within the overall system of monetary sanctions. This punishment schema entails several discretion points, including, citations by police officers, sentencing by court officers, management of debt by court clerks and private collection agencies, judicial and probationary supervision and punishment of people who owe court debt. As our analyses illustrate, many of the cases that come before the SMC have been initiated not by Seattle Municipal Court judges, but instead via traffic violations issued by Seattle police and parking enforcement officers. As such, our concluding discussion of policy implications suggests a broad range of officials, including the Seattle Police Department and SMC, to collectively think broadly about this system of monetary sanctions and how best to alleviate the consequences for people who are unable to pay the debt and who are processed through multiple discretion points that lead to a cumulative negative effect.

Report Aims

The aim of this report is to outline four dimensions related to the citation, sentencing and management of fines and fees by the Seattle Municipal Court. We aim to better understand the type of SMC cases associated with LFO sentences and the time it takes for people to pay off the debt. We are also interested in how the debt might matter for subsequent criminal court involvement. Might carrying LFO debt increase individuals' contact with superior courts in Washington State? Furthermore, a key outstanding question about LFOs is the extent to which there may be racial and ethnic differences in citations, sentencing, ability to pay the debt and subsequent court contact. Also, of interest is how the City of Seattle Municipal Court's LFO sentencing, and the duration of debt and ability of citizens to pay that debt back, compares to other cities in Washington State. From this set of questions, we have arrived at the following dimensions for analysis:[vi]

1. Extent and characteristics of unpaid debt
2. Impact of SMC fines and fees on people who cannot afford them
3. Exploration of racial disparities in traffic and non-traffic infractions
4. Comparison of the City of Seattle LFO process with other cities in WA State

Summary of Key Findings:

In what follows we provide a detailed analysis of the scope of fines and fees sentenced and collected by Seattle Municipal Court through 2000-2017. In sum, we present the following key findings from our data analysis:

1. There has been a remarkable decline in cases filed in Seattle Municipal Courts between 2000 – 2017, even as the population size of Seattle increased during this time period.

2. People sentenced to criminal traffic cases tended to have their LFO accounts open (not fully paid) for longer periods of time relative to other types of traffic cases.

3. For each class of case, Black men and women are significantly more likely than their peers to be sentenced to incarceration through a Washington superior court following a paid Seattle Municipal Court legal financial obligation sentence (SMC LFO).

4. Black men and women are more likely to be incarcerated following an unpaid SMC LFO than are any other racial or ethnic group.

5. People of color have a higher likelihood than White people to be charged with a DWLS3 following a Seattle Municipal Court legal financial obligation sentence. This is especially pronounced for Black Seattle drivers.

III. Data and Methods

All cited or convicted cases from 2000-2017 were provided by the Seattle Municipal Court via the JIS (District and Municipal Court Judicial Information System).[vii] This data system assists court officers and clerks in managing and reporting Washington State's district and municipal court cases. All analyses were conducted by Frank Edwards, using the R statistical programming language. Comparisons to other jurisdictions use data from the Washington Administrative Office of the Courts (AOC) on LFO sentencing in all other Washington Municipal Courts between 2000 and 2014.

Note that the analyses below exclude a very small number of cases in which total assessed LFOs equaled over one million dollars. The analyses also exclude a small number of felony cases recorded in the data. Population data are obtained from the 2000 and 2010 census, and intervening years are imputed through linear interpolation.

While each case can be assessed multiple LFOs (mean LFOs per case with assessed LFOs in sample = 6.6), all reported LFO figures are aggregated to the case-level to ensure comparability across categories of violations and between SMC and other courts of limited jurisdiction. We compute three values to describe the legal financial obligations assessed for each case: initial amount ordered, amount owed after court adjustment, and amount paid.

Table 1. Median annual total SMC LFOs by case type (in 2018 inflation adjusted dollars)

Case type	Originally ordered	After court adjustment	% Adjusted from Original	Paid	% Paid from Adjusted
Infraction Traffic	$ 24,467,354	$ 9,471,204	39%	$ 8,080,052	85%
Infraction Non-Traffic	$ 824,678	$ 406,969	49%	$ 283,779	70%
Criminal Traffic	$ 3,598,035	$ 579,825	16%	$ 528,681	91%
Criminal Traffic: DUI	$ 4,033,011	$ 642,556	16%	$ 543,827	85%
Criminal Non-Traffic	$ 12,041,164	$ 356,704	3%	$ 304,264	85%

The initial **amount ordered** is a simple sum of all ordered LFOs at the case-level prior to any adjustment by the court. The **amount paid** is a sum of the total amount paid on LFOs at the case-level. The **amount owed** after court adjustment is computed according to the following rules:

- If the current amount due on an account is recorded as zero dollars, the adjusted amount is equal to the paid amount
- If the current amount due on an account is greater than zero dollars, the adjusted amount is equal to the current amount owed plus the total paid.

Each of these values is inflation adjusted to January 2018 dollars using the consumer price index to ensure comparability over time.

Race, Ethnicity and Surname Analysis

SMC does not collect race/ethnicity for subject to LFOs. Instead, it relies on and reports data collected by police, and these data do not report Latinx ethnicity. To disaggregate Latinx people from non-Hispanic white people, and to recover information on some cases where race/ethnicity data is missing (about 10 percent of cases), we construct a two-stage imputation process based on a method developed by Imai and Khana[viii]. First we match surnames to Census records that provide estimates of the share of the population with a given surname. Then, we use data on the racial composition of the population in King County, in combination with matched name probabilities, to impute the race/ethnicity of court records missing this demographic information. We classify all records with an imputed posterior probability of Hispanic ethnicity greater than 0.75 (conditional on surname and population composition) as Hispanic, and all those less than or equal to a posterior probability of Hispanic ethnicity to be non-Hispanic. We use a similar procedure for missing data in the AOC records for other Washington courts. Prior to imputation, about 10 percent of cases were missing data on race/ethnicity. After imputation, about 8 percent of cases are missing data on race/ethnicity. Additionally, about 8 percent of cases recorded as white in the initial data are reclassified as Latinx.

Incarceration History

We establish an individual's incarceration history by linking individuals to AOC data on superior court sentences by individual surname and date of birth. This procedure results in about 700,000 individuals with records in both SMC and AOC data. From these matches, we then identify records where an individual was ever sentenced to jail or prison by any superior court in Washington, and identify those cases where SMC LFO sentences preceded a first incarceration sentenced from a superior court based on AOC sentencing dates and SMC filing dates.

Case Types

We use SMC provided case type codes, but distinguish DUI cases from other criminal traffic cases by recoding all cases with a finding of "committed" or "guilty" for any case with a violation code listed as SMC 11.56.020, "Persons under the influence of intoxicating liquor, marijuana, or any other drug." These DUI cases are recoded as a separate category, and are excluded from the criminal traffic case type.

IV. Findings

1. Extent and characteristics of paid and unpaid debt

Our first step to examine legal financial obligations (LFOs) from Seattle Municipal Court (SMC) is to assess the volume of cases, the volume of debt sentenced, and the volume of debt that remains uncollected and under the city's purview. **Figure 1** shows the total volume of cases with ordered LFOs in SMC between 2000 and 2017. The top panel of Figure1 adjusts the total caseload with ordered LFOs to a rate per 1,000 Seattle residents, and the bottom panel displays the caseload as an unadjusted count.

Figure 1. Number of cases with LFOs in Seattle Municipal Court, and cases with LFOs per 1,000 persons by violation type: 2000 – 2017.

Cases have trended downward over this 18-year period. In 2000, SMC handled over 100,000 total cases, and the caseload total was at a minimum in 2017 at about 40,000 cases with ordered LFOs. Because Seattle's population grew substantially over this time period, the per capita rate of LFO orders declined even more rapidly, from a peak of about 200 cases with LFOs per 1,000 residents in 2000 to a minimum of about 50 cases with LFOs per 1,000 residents in 2017, about 25 percent of the rate of LFO debt orders per capita in 2000. Note that across this time period, the overwhelming majority of SMC cases with LFOs were traffic infractions. Non-traffic infractions and criminal cases made up a minority of the remaining cases. In 2017, SMC ordered LFOs in 40,672 cases. **Table 2**. Illustrates that of these cases, 83 percent were traffic infractions,

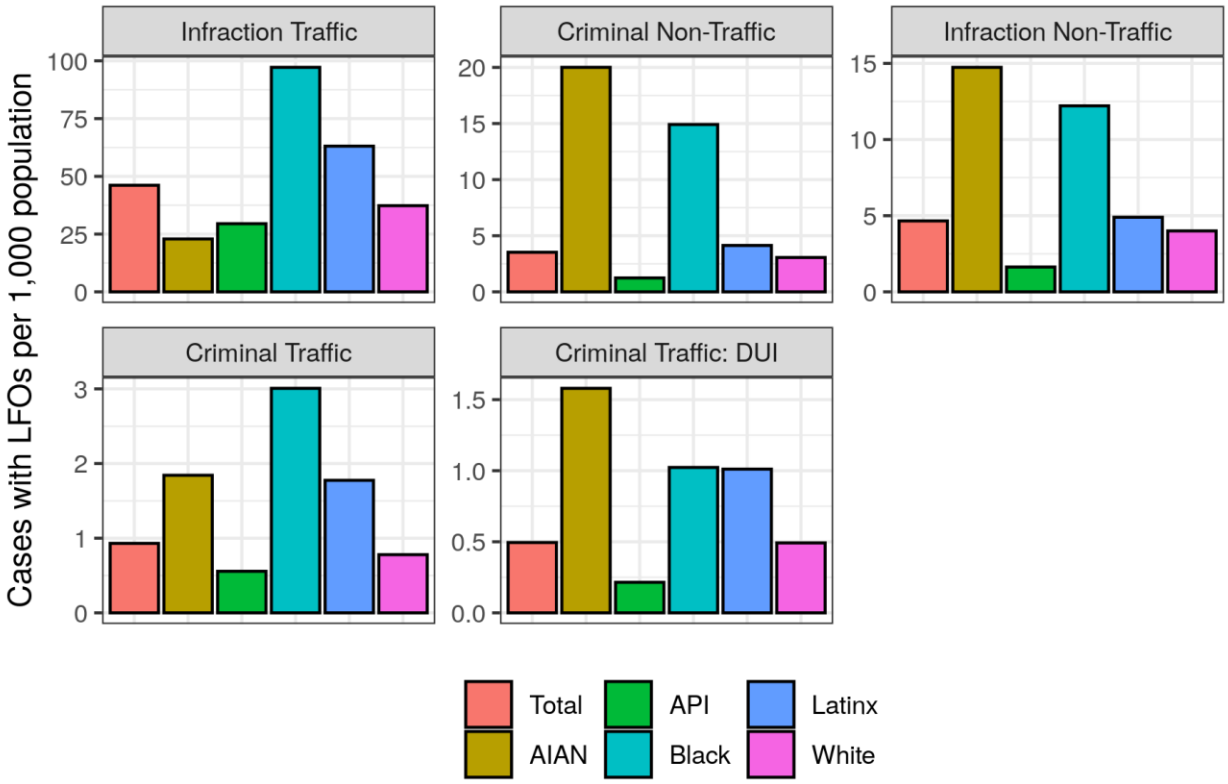
8 percent were non-traffic infractions, 6 percent were non-traffic criminal cases, 2 percent were criminal traffic cases, and 1 percent were DUI cases.

Table 2. Distribution of LFOs by Case Type in SMC, 2000-2017 (N = 40,672).

Case Type	% of Total Cases
Traffic Infractions	83%
Non-Traffic Infractions	8%
Non-Traffic Criminal	6%
Criminal Traffic	2%
DUI	1%

Figure 2 displays the distribution of the SMC LFO caseload across Seattle's population by race/ethnicity using data from cases filed in 2017. Each panel of the figure represents a class of cases. Note the variation in the scale of the y-axis for case rates across categories. For all classes of cases, people of color are ordered LFO debt more frequently than White people in Seattle. In 2017 Black drivers in Seattle were issued 2.6 times more traffic infractions with LFOs per capita than were White drivers. Latinx drivers were issued 1.7 times more traffic infractions than White drivers. American Indians / Alaska Natives were issued LFOs for criminal non-traffic offenses at a per capita rate 6.7 times higher than the rate for white Seattle residents. Non-traffic infraction LFOs were ordered 3.7 times more frequently for American Indians/Alaska Natives than for Whites, and Black Seattlites were issued LFOs for non-traffic infractions at a rate 3.1 times higher than Whites. These disparities are largely a function of case volume, driven by law enforcement activity and population differences.

Figure 2. Cases with LFOs in Seattle Municipal Court per 1,000 population by race/ethnicity, 2017



As shown in **Figure 3**, there are few differences across racial and ethnic groups in initial SMC debt orders and in final amounts ordered after court adjustment for the most common categories of cases. There is more heterogeneity in non-DUI criminal offenses in initial orders, but these offenses are relatively rare in SMC and heterogeneous in composition. Despite some apparent inequalities in high initial sentences for criminal traffic and non-traffic cases, note that after court adjustment, many criminal cases have their balances reduced to near-zero, and initial inequalities are generally reduced or eliminated for criminal LFOs. For DUIs and infraction violations, racial and ethnic differences in median initial and adjusted sentences are minimal.

Coupled with the results in Figure 2, these findings strongly suggest that SMC sentencing practices themselves are not a key driver of racial inequalities in Seattle LFO debt. Instead, the flow of cases into the court appears to be the key driver of population-level inequalities. As explained in the introduction, LFOs are situated within a system of monetary sanctions whereby many are triggered with the citation of tickets by law and parking enforcement. While other LFOs are sentenced directly by court judges. It appears that much of the disproportionate burden of LFOs for people of color managed by SMC stems from the issuing of traffic citations by police and traffic enforcement. When these cases come into the SMC, as with other initial LFO sentences, much of the disparity in sentence amounts are adjusted by SMC court officials.

Figure 3. Median case-level LFO debt originally ordered, after court adjustment, and paid by case type by race/ethnicity, 2015 - 2017

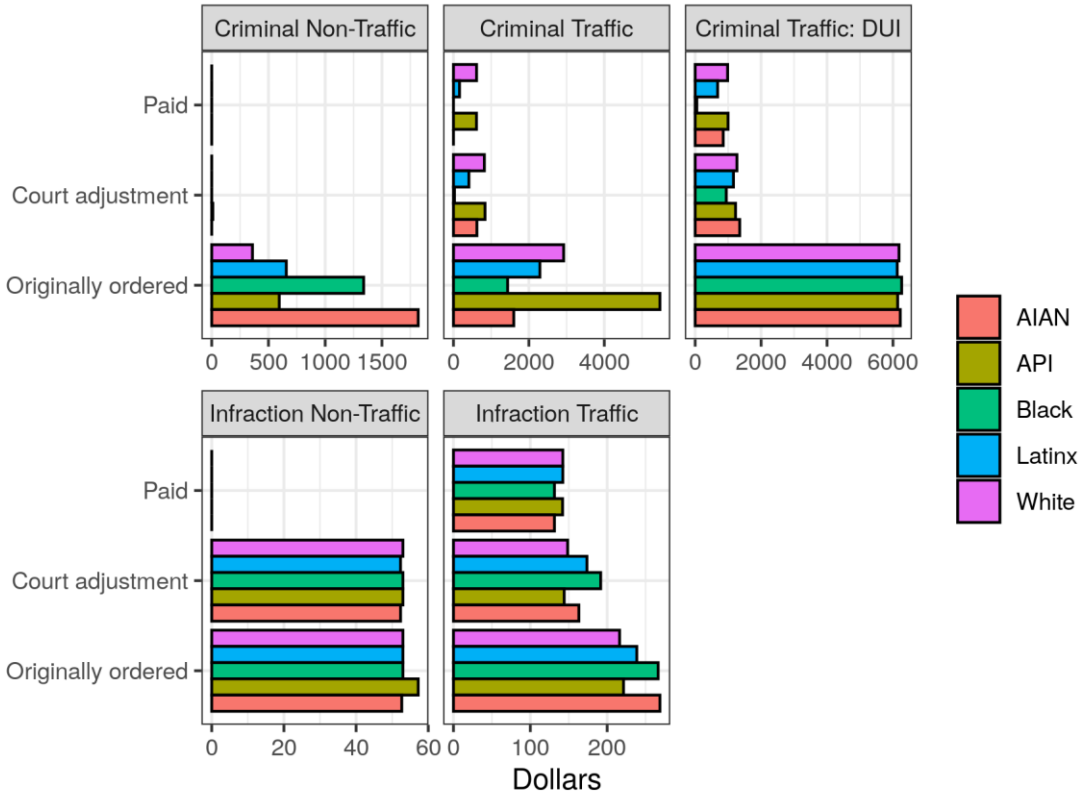


Figure 4 shows how initial orders relate to actual amounts due after court adjustment, and how much of this adjusted balance remained outstanding for accounts filed in 2017. The majority of the initially ordered debt through SMC was for traffic infractions. In 2017, over 10 million dollars of LFOs were ordered through SMC for traffic infractions. After court adjustment, the balance was reduced to 7.2 million dollars, a reduction of about 35 percent from the initial amount ordered. Of this adjusted amount, about 4.8 million was paid before the end of the year in 2017, about 66 percent of the adjusted balance, leaving about 34 percent of the adjusted traffic infraction LFO orders outstanding within this single year of orders. Criminal non-traffic offenses had the second highest total initial LFO amount ordered, at about 5.5 million dollars.

However, the court dramatically reduced this balance due, to an aggregate of about 360 thousand dollars, a reduction of about 93 percent of the initial amount ordered. Of this much reduced balance, most was paid; only about 20 percent of the criminal non-traffic LFO balance was unpaid by the end of 2017. We see similar patterns for criminal traffic (DUI and non-DUI) offenses, with aggregated initial orders of over 2 million reduced by the court to about 400 thousand, a reduction of about 80 percent. For both DUI and other criminal traffic offenses, the majority of the remaining balance was paid within the year. Traffic infractions represent a smaller share of the total debt issued by the court, about 650 thousand in initial orders, and 400 thousand after court adjustment. This reduction is of a similar magnitude to the reductions ordered by the court for traffic infractions, about a 39 percent decrease from initial orders. Of this remainder, much remained unpaid, about 60 percent.

Figure 4. SMC LFO debt originally ordered, after court adjustment, and paid by case type, 2017

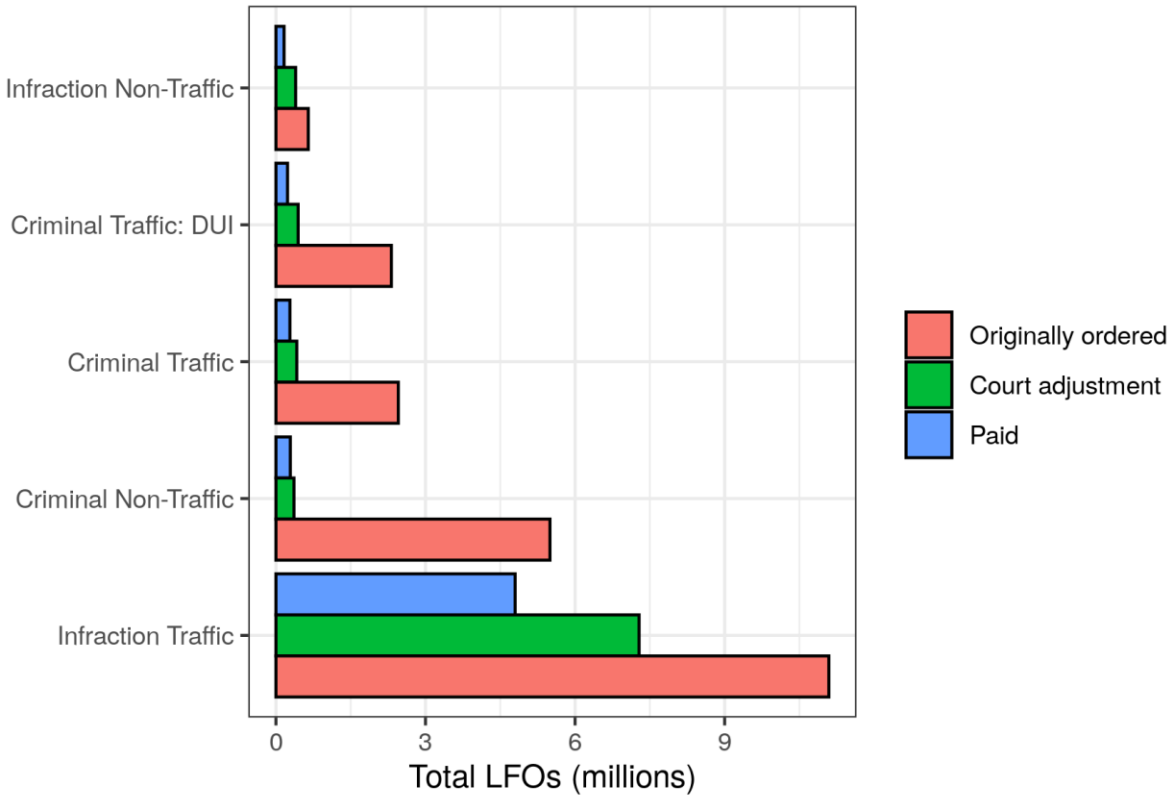


Figure 5 examines how the court adjusted commonly imposed individual legal financial obligations in typical non-DUI criminal cases in 2017. For non-traffic criminal offenses, the average initial fine was about $4900. However, after court adjustment, the average balance due for fines in criminal non-traffic cases was about $10, a dramatic reduction. Other fees and assessments were typically also reduced by large amounts. Restitution, on the other hand, was typically not dramatically reduced by the court. On average across all cases, the ordered restitution amount was ordered about $170, and the average amount after adjustment was about $130. Similar patterns hold for criminal traffic cases. Fines were reduced (on average) by about 90 percent and made up the overwhelming majority of initial LFO orders. Other classes of LFOs were not reduced by the same magnitude, but initial orders were typically quite low.

Figure 6 displays routinely imposed LFOs for both traffic and non-traffic infractions. Note that there are many more types of commonly issued LFOs in these cases than in criminal cases in SMC. Penalties and fines make up the bulk of non-traffic infraction LFO orders, at around $100 each in initial penalties and fines. The court often reduces the penalty order substantially, but infrequently reduces ordered fines in these cases. For both traffic and non-traffic infractions, a battery of fees, surcharges, and assessments are imposed on cases. For example, the most commonly imposed charges include a time payment setup fee, a criminal conviction fee, a trauma care system surcharge, an auto theft prevention assessment, a JIS fee, a default penalty, an accident penalty, a cancellation fee and a deferred finding administrative fee. While each of

these charges is typically a small amount, they are rarely reduced and may add up to substantial total balances.

Figure 5. Average amount ordered, amount ordered after adjustment by court, and amount paid by kind of LFO and by case type: Criminal

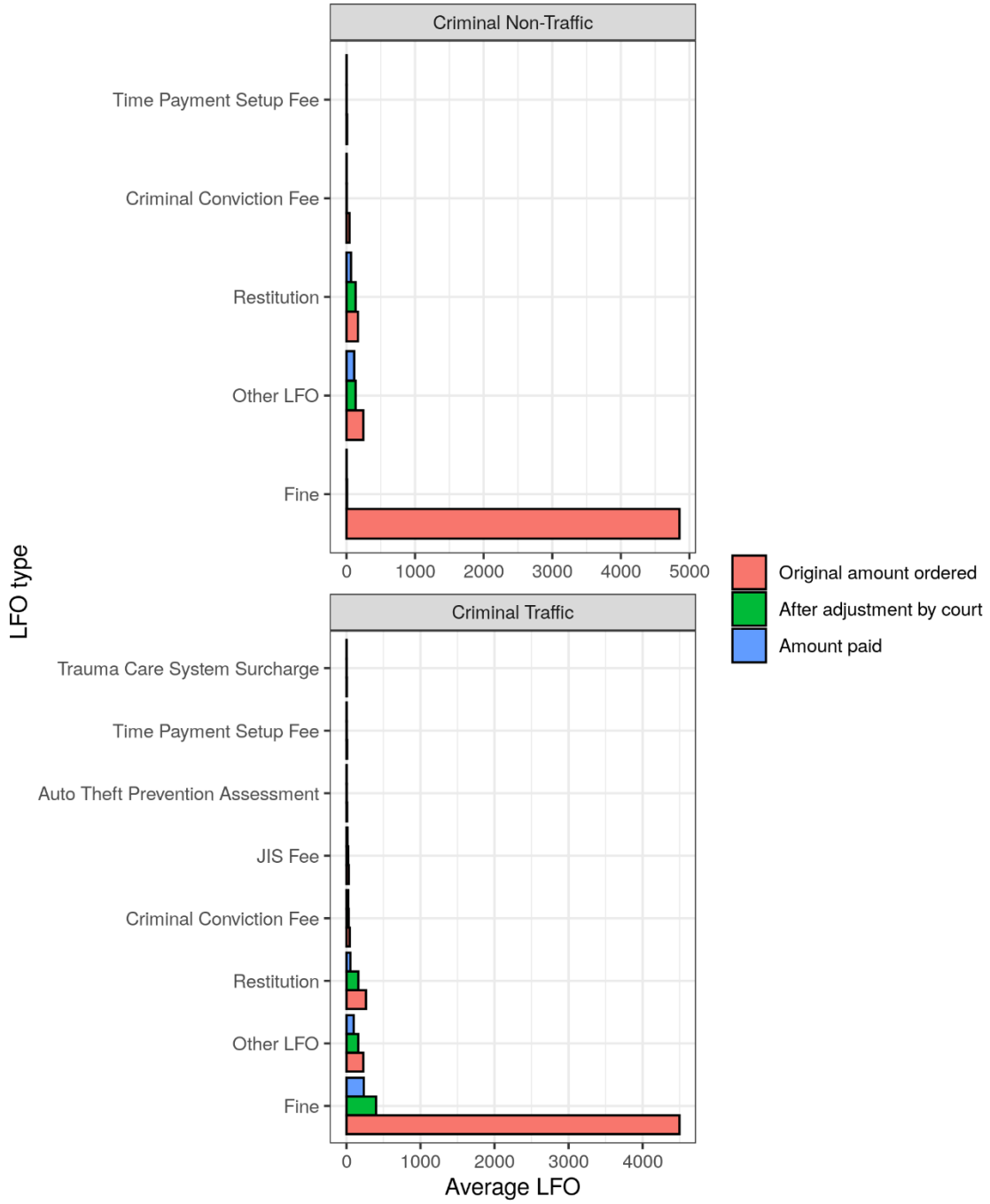


Figure 6. Average amount ordered, amount ordered after adjustment by court, and amount paid by kind of LFO and by case type: Infractions

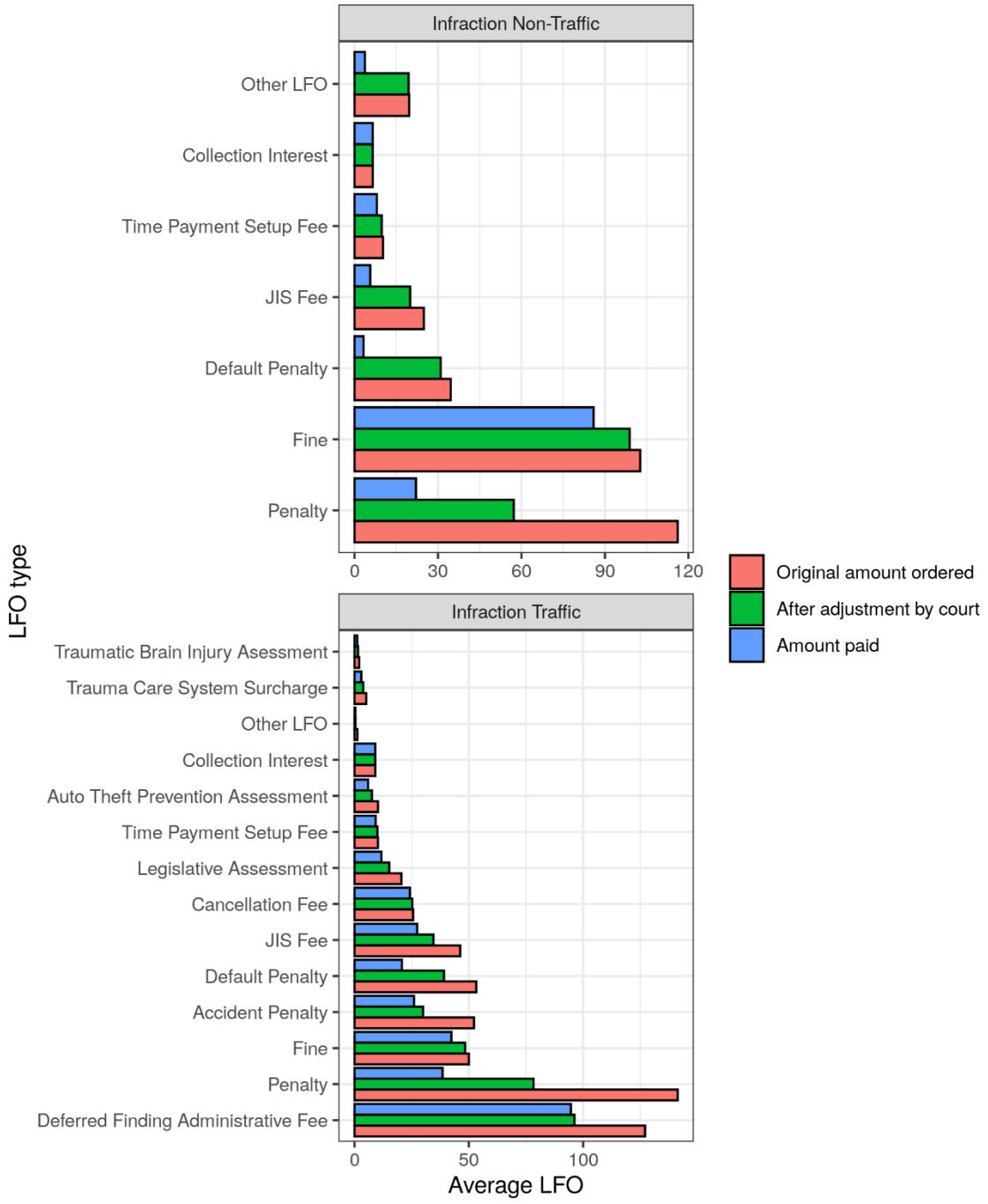


Figure 7 shows the average age of LFO accounts in SMC by case type for cases filed between 2007 and 2017, setting a maximum age of 10 years. Note the very short age for most infraction accounts. The average traffic infraction account is opened and closed within 4.3 months. The average non-traffic infraction account is opened and closed with 6.2 months. Criminal accounts tend to be sentenced to much higher amounts (see Figure 3), and tend to remain open much longer. The average non-traffic criminal account remains open for 1.2 years, but note the long tails on the distribution of case ages; some accounts remain open much longer. The average criminal traffic account remains open for about 2 years, and the average DUI account remains open for about 4.6 years. Note that a non-trivial number of criminal accounts remained open and not fully paid for a full 10 years.

Figure 7. Age of LFO accounts at closing date by case type in Seattle Municipal Court, 2007 - 2017

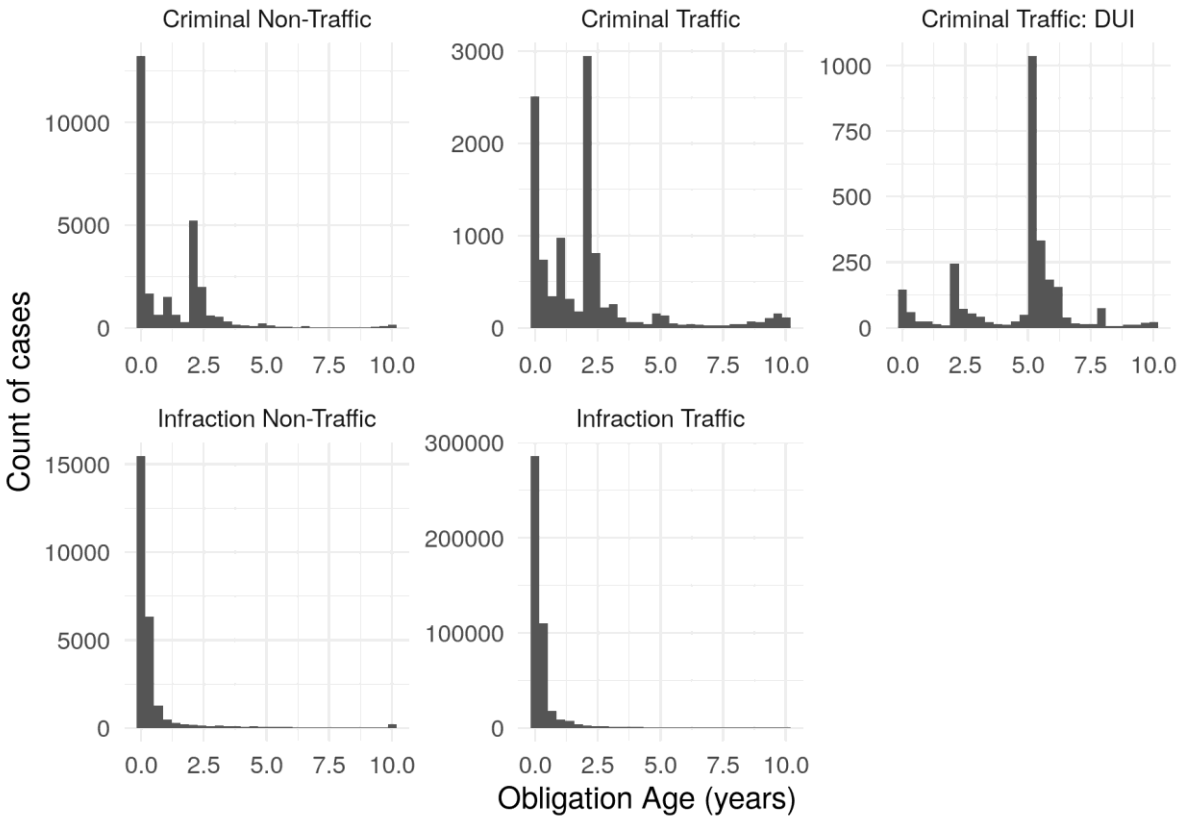


Figure 8. Expected length of LFO account time to close by case type, 2007 - 2017

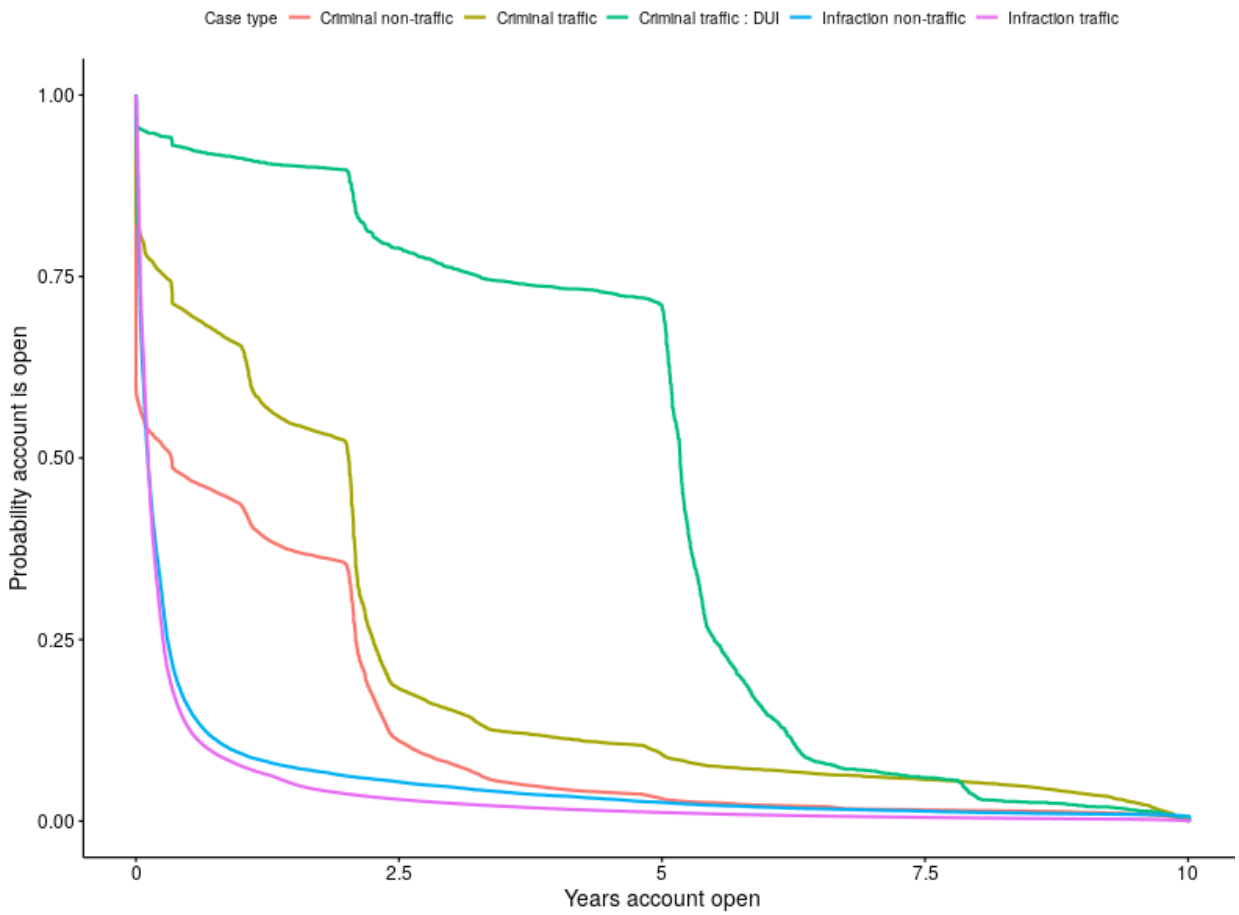


Figure 8 shows the results of a survival analysis of LFO account closure. Survival analysis is a statistical method that allows estimates the time to an event across different kinds of cases, including for cases that have not yet experienced the event (censoring). In this case, we estimate how long, on average, different kinds of LFO accounts remain open by building a statistical model that estimates the average time it takes until a case is closed. Below we illustrate the probability of an account remaining open as a function of the account's age and the case type. DUI cases tend to survive the longest. Over this period, about 75 percent of DUI LFO accounts are expected to remain open and not fully paid after five years. Other kinds of accounts tend to close much more quickly. Few infraction LFO accounts remain open after one year, and the majority of non-DUI criminal cases are closed within 2.5 years. Non-traffic criminal cases tend to close more quickly than criminal traffic cases.

2. Relationships between SMC LFOs and more serious criminal justice system contact

In this section we are interested in understanding the criminal justice consequences for people who have unpaid court debt. We examine the relationship between court debt sentenced in SMC with a subsequent conviction in Washington State Superior court. We conduct a longitudinal analysis that explores whether court debt predicts future incarceration. That is, what is the likelihood that someone will be incarcerated if they carry LFO debt. Note that these are not causal estimates, and do not identify the effect of SMC fines and fees on future incarceration. Instead, our estimates describe associations between debt and future incarceration outcomes. The figures below should be interpreted as the expected conditional probability of future incarceration after SMC LFOs for each group. However, these estimates do not capture the *independent* impact of SMC LFOs on future incarceration because unmeasured variables likely confound the relationship between court debt and future criminal justice outcomes. However, these models can accurately predict the proportion of people in each category (e.g. White, with unpaid LFO) who are likely to experience a particular outcome after receiving an LFO through SMC.

In these models, we use data from the Washington Administrative Office of the Courts (AOC) to identify the first time a person was sentenced to jail or prison by a Washington Superior Court. We then match these first-time incarceration records to SMC LFO records based on a person's name and date of birth. Note that because some names or dates of birth likely do not exactly match across AOC and SMC data, these probabilities / proportions should be taken as conservative estimates. Also, note that these models predict first incarceration sentenced in Superior Court in Washington. It is possible that LFO sentencing relates to pre-trial incarceration or incarceration sentenced in municipal or district courts, to incarceration for technical violations of conditions of release or deferred adjudication, or for recidivism and desistance. These models do not capture these outcomes.

Figure 9 displays the results of a logistic regression model of the probability of being sentenced to jail or prison in a Washington Superior court following sentencing to LFO debt in SMC. We display predicted probabilities of incarceration from a regression model that assumes the LFO was sentenced in 2010, that the amount sentenced was $175, and that the person had not been previously been sentenced to incarceration in a Washington Superior Court. We estimate these probabilities separately for men and women, and by race/ethnicity. Note that model inputs include defendant race, gender, case type, total obligations sentenced, whether any payment was recorded, and the year in which the case was filed.

We begin by examining the likelihood of a person receiving a sentence to jail or prison by a Washington State Superior Court judge among the population of people who have been sentenced to SMC LFOs and who have paid them. The bottom panel of Figure 8 shows the probability of being sentenced to incarceration by a superior court following LFO sentencing in SMC when the balance of the sentenced LFO was paid in full by race and sex. For each class of case, Black men and women are significantly more likely than their peers to be sentenced to incarceration following an SMC LFO paid in full. This includes non-criminal infractions.

Figure 9. Proportion sentenced to incarceration in Washington Superior Courts after being sentenced to $175 in SMC LFOs (adjusted) by race, case type, and payment / non-payment, logistic regression expected values.

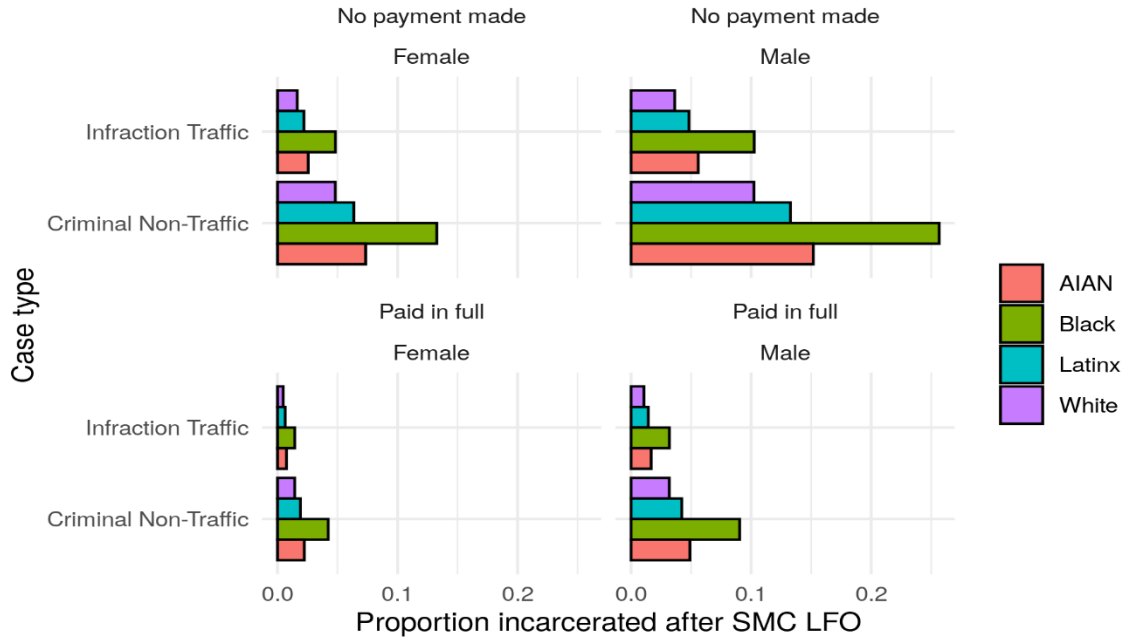


Table 3. Highlights these findings for Black and White men. We estimate that a Black man sentenced to a $175 LFO in SMC for a traffic infraction that has paid their LFOs in full has about a 3 percent probability of being later sentenced to incarceration in a Washington Superior Court, compared to about a 1 percent probability for White men. For criminal non-traffic offenses, Black men have about a 9 percent chance of being incarcerated through a superior court following a paid SMC LFO, compared to a 3 percent chance for White men. We find that a Black man with an unpaid LFO from a criminal non-traffic SMC case will have a 26 percent probability of later incarceration through WA Superior courts. This compares to 10 percent probability for White men. In sum, Black men and women are more likely to be incarcerated following an unpaid SMC LFO than are any other group. American Indians / Alaska Natives are also more likely than White or Latinx people to be incarcerated following an SMC LFO. Our analysis finds a correlation between LFOs sentenced, paid and unpaid, for subsequent incarceration with key racial differences.

Table 3. Percent Likelihood of Subsequent Incarceration Post LFO $175 sentence.

	White Men	Black Men
Traffic Infraction		
Paid in full	1.1%	3.2%
Unpaid	3.6%	10.3%
Criminal Non-Traffic		
Paid in full	3.2%	9.0%
Unpaid	10.2%	25.7%

3. Exploration of racial disparities in traffic and non-traffic infractions

In this section we explore the extent to which there may be racial and ethnic differences in the issuance and sentencing of LFOs through SMC. We also explore how likely Seattle drivers are to receive a driving with a license suspended in the third degree (DWLS 3)[ix] charge after receiving any SMC LFOs, and whether there are any racial and ethnic differences in these probabilities. License suspension is a critical consequence of unpaid LFOs, and prior research suggests that low-income people of color may face a heightened risk of license suspension, leading them to more serious criminal justice system involvement (Harris 2016). In this way, license suspension resulting from unpaid LFOs may be an engine of racial and ethnic inequality.

Figure 10 shows the results of a logistic regression model estimating the probability that a driver will be charged with DWLS3 in SMC after receiving any LFO from SMC. Black drivers are far more likely than others to be charged with DWLS 3 following an SMC LFO. About 2.3 percent of all Black men who receive traffic infraction LFOs in SMC can expect to be charged with DWLS 3, compared to about 0.4 percent of White men. Latinx and American Indian / Alaska Native men charged with traffic infractions are more likely than White drivers to be charged with DWLS 3 following an SMC LFO; about 0.8 percent of Latinx men and 1 percent of AI/AN men, on average, will receive a DWLS3 charge in SMC following a traffic infraction at 2000 – 2017 rates.

Figure 10. Proportion charged with driving with a suspended license (3) after being charged with an SMC LFO, logistic regression expected values

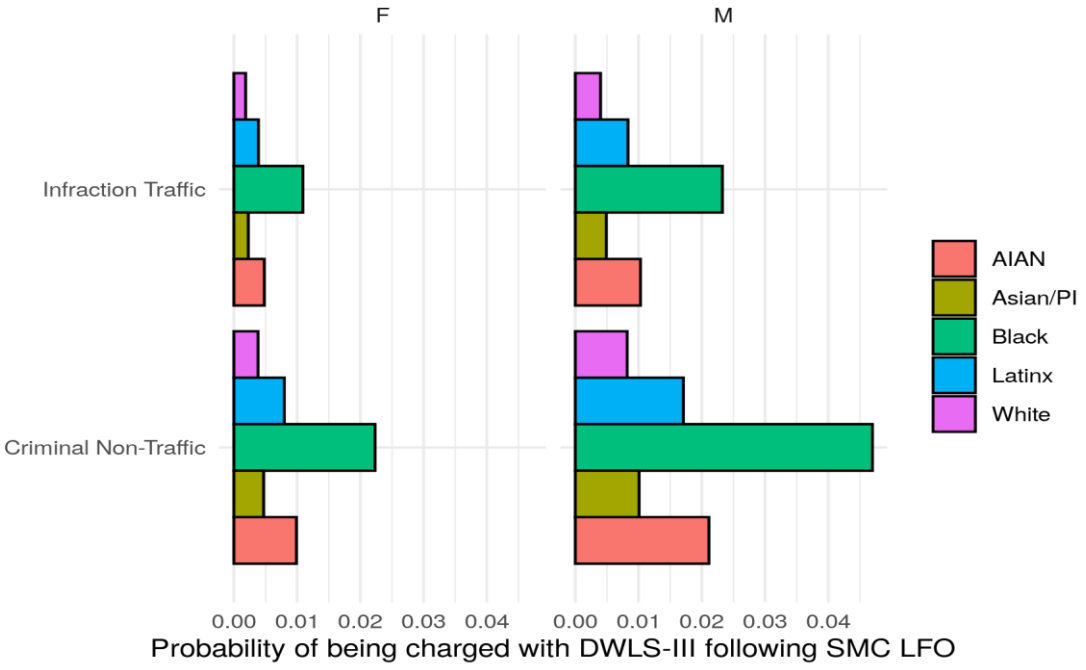
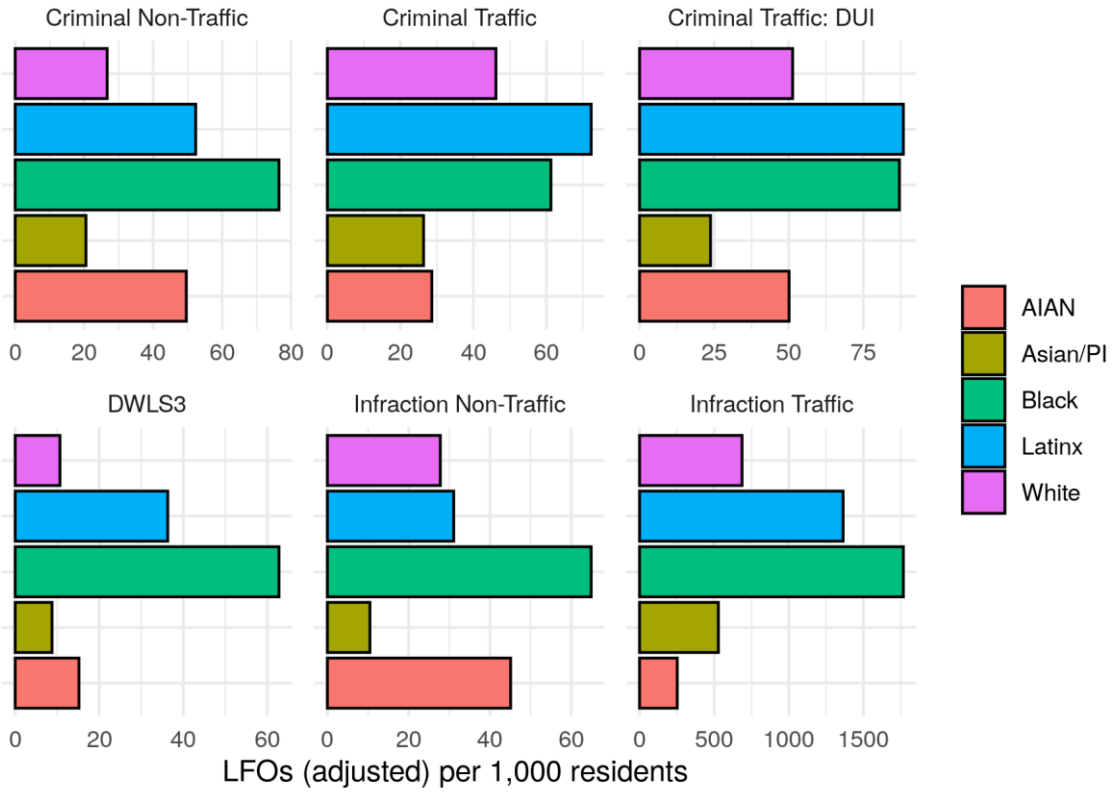


Figure 11. Adjusted SMC LFO debt per 1,000 residents by race/ethnicity and case type, 2017.



Next, we evaluate how LFO debt is distributed across groups in Seattle. **Figure 11** shows the average LFO debt per 1,000 residents of Seattle per year across racial and ethnic groups. Unlike Figure 2, which showed cases per capita, Figure 11 displays the average imposed LFO amount for each category of case, assuming it was evenly distributed across all residents of that group. Black Seattle residents receive more LFO sentences per capita than does any other group in the city for all categories of charges except criminal traffic offenses. Latinx residents receive more LFOs per capita than do Black Seattle residents for criminal traffic offenses.

Between 2000 and 2017, for every 1,000 Black residents in Seattle, SMC issued on average $1767 in traffic infraction LFOs each year, $148 in criminal traffic LFOs, $77 in criminal non-traffic LFOs, and $63 in DWLS3 LFOs. Note that American Indians / Alaska Natives and Latinx people are also disproportionately sentenced to SMC LFOs across many categories of violations.

Figure 12. Ratio of adjusted SMC LFO debt per 1,000 residents by race/ethnicity relative to white, 2014. Dashed line indicates equality.

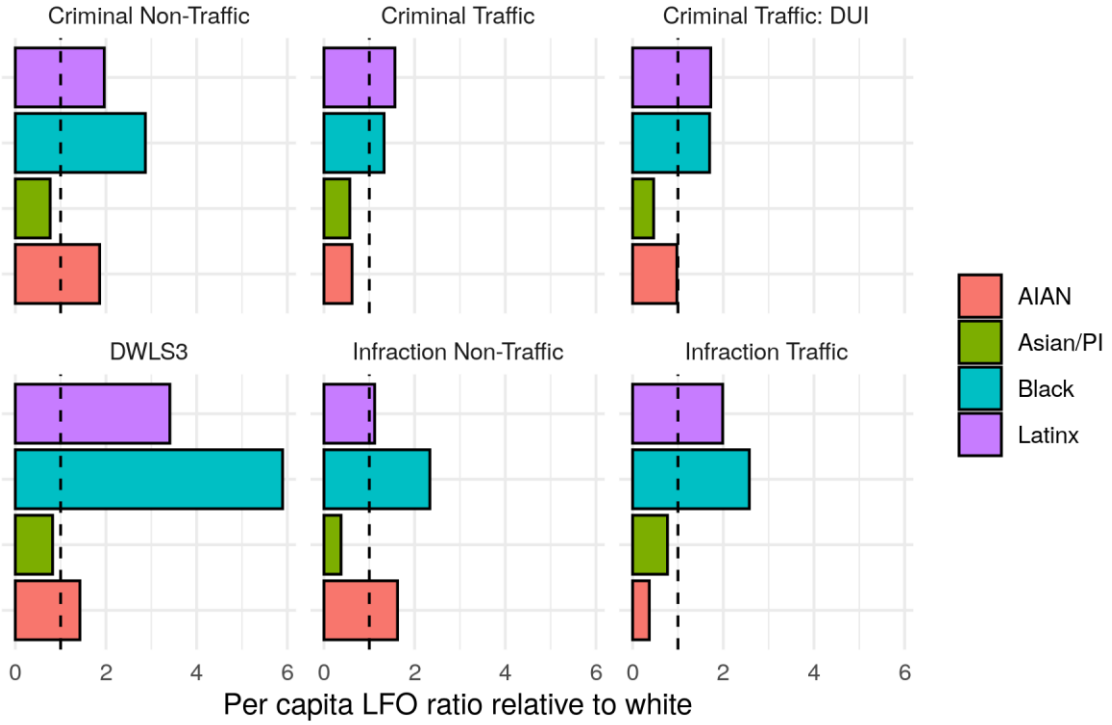


Figure 12 displays per capita sentencing values as ratios of the sentencing per capita for people of color in Seattle relative to the sentencing values White people received. This ratio provides a measure of disproportionality in LFO sentencing relative to population size by race/ethnicity. The dashed line at 1 indicates equity in LFO sentencing for White and non-White groups. Black people in Seattle are sentenced to DWLS3 LFOs at a rate nearly 6 times higher than the rate at which White people in Seattle are sentenced to DWLS3 LFOs. Latinx residents are sentenced to DWLS3 LFOs at a rate 3.4 times higher than the White sentencing rate. Black and Latinx Seattle residents are sentenced to LFO debt at higher rates than White Seattle residents for all categories of violations. American Indian / Alaska Native Seattle residents are sentenced to higher levels of debt than White residents for criminal non-traffic, infraction non-traffic, and DWLS3 than are White residents. There is a high degree of inequality measured as per capita debt load, but relatively low inequality measured as median adjusted court ordered debt. In sum, our exploration of racial disparities in traffic and non-traffic infractions illustrate a high degree of racial/ethnic disproportionality in both the case volume and ability to pay.

4. Comparison of the City of Seattle LFO process with other cities in WA State

Below, we compare SMC LFO sentencing practices and caseloads to other municipal courts across Washington using data from the Washington Administrative Office of the Courts (AOC). Because coding systems for LFO obligation types differ across data systems, and municipal codes vary significantly across the state, we focus our comparison on aggregate LFO measures. Because of these complexities, and differences within courts across judges, it is difficult to directly compare the imposition of particular legal financial obligations. Instead, we focus here on comparing how caseloads, average sentences, and total debt loads have varied across jurisdictions over time. We divide Washington municipalities into those with fewer than 10,000 residents, greater than 10,000 but fewer than 50,000 residents, greater than 50,000 but fewer than 75,000 residents, greater than 75,000 and fewer than 100,000 residents, more than 100,000 but fewer than 250,000 residents, and Seattle. Note that our AOC data only cover 2000 - 2014, while our SMC data cover 2000 - 2017. As such, we truncate the Seattle data to only include the years 2000 - 2014 to maximize comparability.

Figure 13. LFO debt ordered (adjusted) per 1,000 residents in Washington Municipal Courts, by population size of city

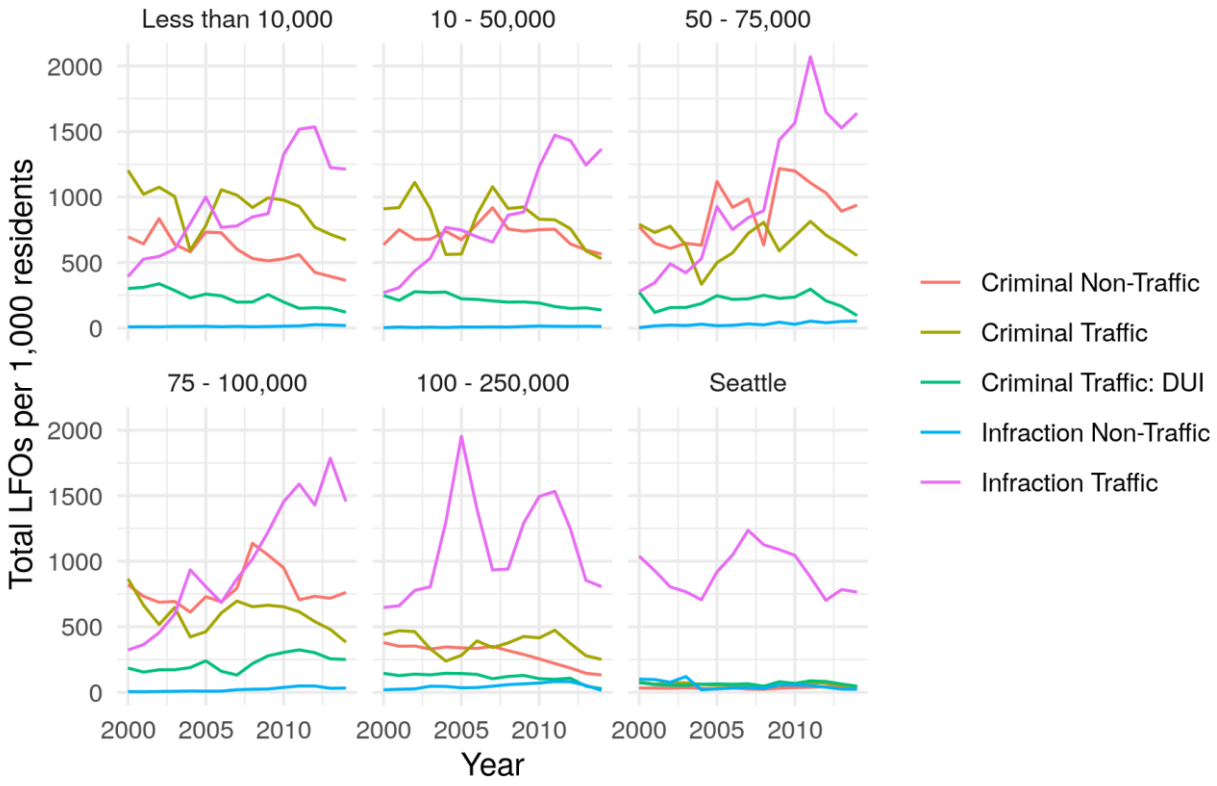


Figure 13 displays the median annual per capita LFO volume across Washington municipal courts. Note that LFO volume per capita is sensitive to case volume, sentenced amount, and population size. In all jurisdictions, non-traffic infractions make up a very small share of overall debt loads. Traffic infractions make up the bulk of debt in large cities, while criminal traffic and non-traffic cases make up a more substantial portion of total debt in mid-sized and smaller cities

and towns. Despite having more cases per capita in recent years than other large Washington cities, the total LFO debt issued by SMC per capita for traffic infractions is similar to the total debt issued by other large city municipal courts in Washington in recent years.

Figure 14. LFO cases per 1,000 persons by case type and size of city population in Washington Municipal Courts, 2014

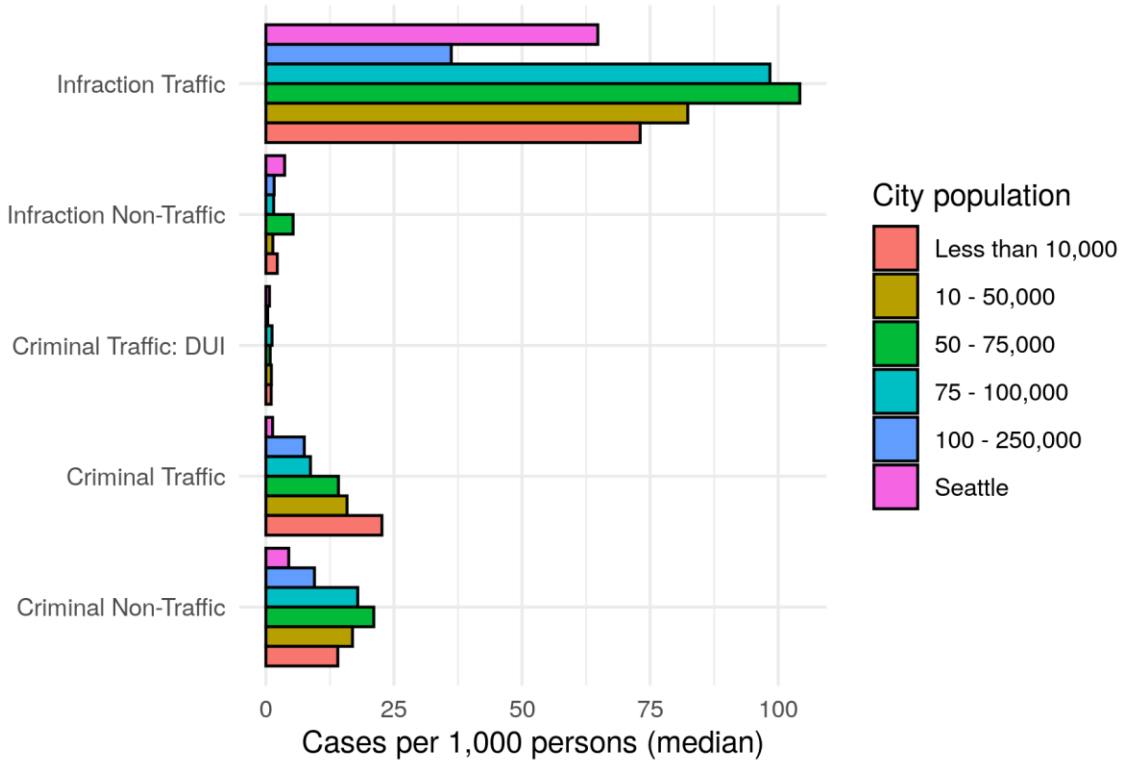
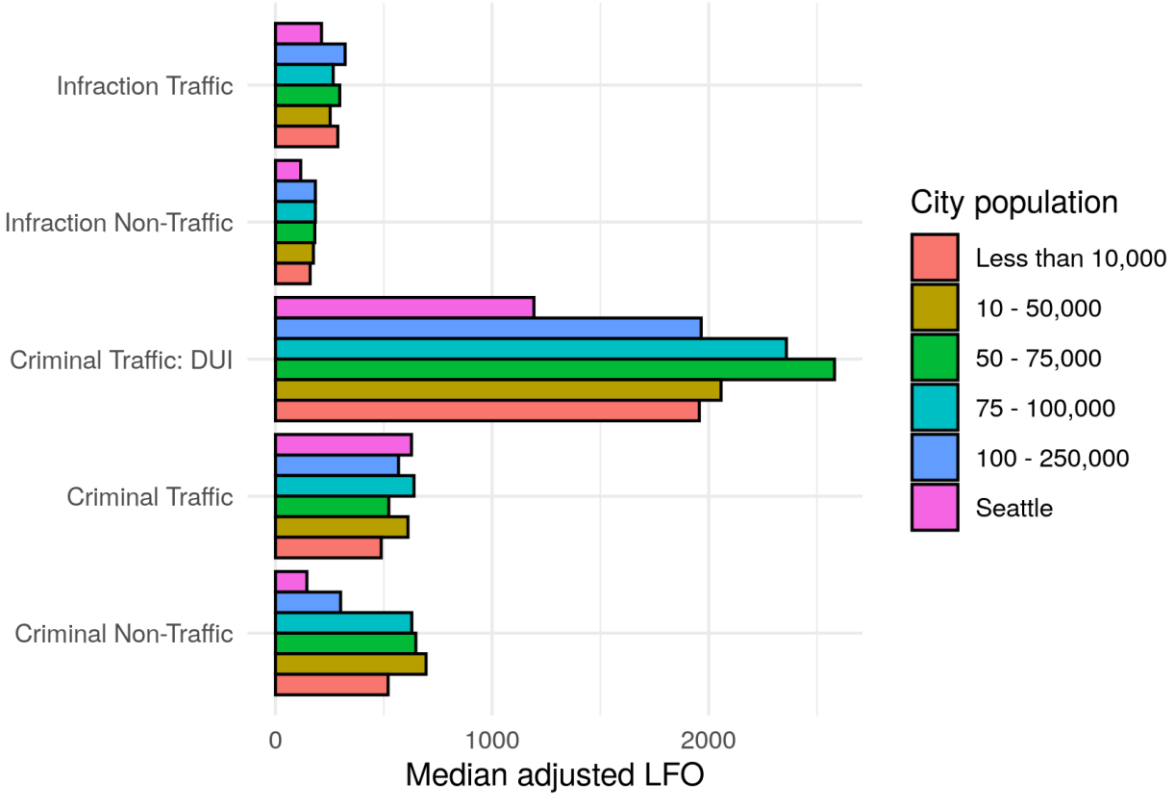


Figure 14 shows the population-adjusted case volume across cities in Washington. In 2014, Seattle's rate of traffic infraction LFO cases was higher than other large cities in Washington, like Tacoma, Spokane, and Everett. However, Seattle issued fewer traffic infractions per capita than did mid-sized cities and small municipalities. Seattle issued more non-traffic infractions per capita than all other classes of cities, with the exception of mid-sized cities (50 - 75,000). DUI rates are similar across all city types. SMC, however, initiates far fewer criminal cases with LFOs than do other cities in Washington. For both traffic and non-traffic cases, SMC's case rate is much lower than other Washington cities.

Figure 15 displays the median adjusted LFO for each class of case in SMC and other Washington courts. SMC issues slightly lower median traffic infraction LFOs than does other municipal courts. The 2014 median in Seattle was $212, compared to a median infraction LFO of $321 in large cities (over 100,000), and $266 in cities between 75 and 100,000 persons. SMC's median DUI LFOs after court adjustment are significantly lower than those in other municipal courts. In SMC, the median adjusted total LFO balance in 2014 was $1193, compared to $1965 in other large cities, and around $2500 in mid-sized cities. For non-DUI criminal traffic cases,

SMC LFO balances are similar to other municipal courts. For non-traffic criminal cases, SMC LFOs are much lower than those commonly imposed in other municipal courts.

Figure 15. Median LFO ordered (adjusted) in Washington Municipal Courts by population size of city, 2017



V. Summary of Findings

Our report examines four areas of interest: 1) the extent and characteristics of LFOs cited and sentenced in SMC, 2) the impact of SMC LFOs on individuals, 3) racial/ethnic differences in a subset of cases (traffic and non-traffic infraction), and 4) comparison of SMC to other municipal courts across Washington State.

In terms of the extent and characteristic of sentenced and outstanding LFO penalties in SMC, the total number of SMC LFO cases trended down from 2000-2017. Traffic infractions comprised the largest percentage of LFO cases in SMC, totaling 83% of all cases. Within all offense categories, people of color were ordered more money per 1,000 residents than were White people. SMC courts adjusted infractions related to LFOs (both traffic and non-traffic) more frequently than LFO cases involving criminal cases (non-traffic, traffic and DUI). In terms of the median LFOs originally sentenced, White people were sentenced/cited on average to the same amount or less than people of color. Black people were paying off LFO debt at lower rates than non-Black people

The issuance of LFOs has a positive correlation with the likelihood of subsequent incarceration. That is, our analysis examining the probability of incarceration with paid and unpaid LFO debt found that Black men and women are more likely to be incarcerated than White men and women post receiving a fine or fee citation or sentence. Black men who have paid off a $175 LFO traffic infraction have a 3.2% subsequently likelihood of incarceration compared to a 1.1% likelihood for White men. Black men with criminal non-traffic LFOs in the amount of $175, and who have paid the costs off, have a probability of incarceration of 9.1% compared with similarly situated White men who have a probability of incarceration of 3.2%. For those who have not paid off the debt they have a dramatically increased likelihood of incarceration, Black men have a probability of 26% and White men 10% of being incarcerated. Both for nonpayment of LFOs and even just the issuing of an LFO that has been paid, increases the likelihood of subsequent incarceration for individuals, but at a higher rate for Black men and women.

Along similar lines, in 2017, people of color overwhelmingly carried more LFO related debt in SMC than White people. This said, it appears that SMC has one of the least punitive sentencing schemas compared to other municipal courts in Washington State. SMC officials ordered the lowest amount of overall LFO sentencings/citations across Washington municipal courts. Seattle Municipal Court has the lowest mean ordered LFOs except within criminal traffic court, which are at par with other cities in the state.

In sum, it is clear that there are negative impacts resulting from LFOs imposed by Seattle Municipal Courts, police and traffic officials. These consequences are disproportionately borne by people of color. The consequences we examined include length of court debt and likelihood of incarceration post imposition of debt. Such consequences can have further triggering effects such as the loss of driver's licenses, garnishment of needed wages to support children and families, the issuing of warrants and further incarceration.

VI. Policy Implications

Despite comparatively imposing LFO debts at lower rates than other cities in Washington, Seattle Municipal Courts still engage in a system of monetary sanctions that leads to disproportionate and negative outcomes for Seattle residents, and in particular, people of color. The intended outcome of future policies should be to ensure that individuals who come into contact with the criminal justice system are not permanently disadvantaged by legal debt.

There are several policy implications that emerge from our analysis. First, we suggest that SMC engage in a broader penological discussion with judges and stakeholders in Washington State about the aim of sentencing and citing people for law violations. What is the aim of sentencing fines and fees to people who violate laws? Is there a way to hold people accountable for violations even when they cannot afford the fines and fees? Are there alternatives to LFO sentences that could possibly improve public safely and to hold people accountable? Alternatives should make sure not to reinforce existing inequalities, for example, some people will be able to pay if they have means, while others will be sentenced to work crews. Thoughtful conversations about court sentencing options that include opportunities for individuals to better themselves through furthering education, drug and alcohol treatment, employment readiness, mental health care and community based service should be considered.

Furthermore, policy makers, practitioners and officials should recognize that the system of monetary sanctions has multiple discretion points, a large number of stakeholders, and a large set of costs. For example, SMC judges must manage the traffic citations that police and parking enforcement officers issue. The bulk of the LFOs cases examined in this study were initiated from such citations. Within this context, SMC judges can only adjust the amounts within existing statutes.

More immediate policy changes could include:

- SMC judges should **continue to assess individuals' abilities to pay** in all circumstances when sentencing LFOs. Judges do appear to be adjusting discretionary fines and fees, where they can, upon reconsideration of sentenced amounts.

- Judges should **continue to waive discretionary costs** when people indicate they have little to no ability to pay.

- Policies at the state and local should **interrogate the necessity for add-on financial penalties** such as interest, time payment set-up fee, JIS fee, default penalties, deferred finding administration fee. These costs may inhibit or distract payments towards the fines and restitution.

- **State policy should decouple non-payment from criminal matters and suspension of driver's licenses.** Our analysis highlights huge racial disproportionality in the conviction of DWLS in the third degree to Black men in Seattle. We suggest state policy eliminate driver's license suspensions that result from nonpayment of citations, fines and fees and in turn lead to DWLS in the third degree convictions.

- **State and local jurisdictions should conduct regular monitoring and analysis of LFO sentencing and collections**. Much of our analysis implies the need for local and state court systems to monitor the impact of LFOs on communities of color. SB 1783, as it currently stands, is silent on the issue of racial disparities. Local and state policy should require courts to monitor the impacts of this legal financial obligation on people of color. No punishment schema should produce disproportionate effects for varying populations. Further analyses should be conducted to examine individual level effects including poverty status and race on outcomes such as length of debt burden and subsequent incarceration. This effort would require improving and ensuring consistency in data collection practices across counties and municipalities.

Our findings are consistent with research that suggests the current practice of imposing LFOs has permanently tethered many who are unable to pay to the criminal justice system for a long period of time.[x] The above policy suggestions recognize that poor individuals and people of color experience the criminal justice system differently in a way that limits their full participation in society. These policy recommendations would help address the disproportionality of the effects of LFOs we found in this study. We suggest justice officials work collaboratively to further public safety and enforce a penalty structure that does not lead to racial and economic inequalities such as long-term debt burdens and increased likelihood of incarceration.

Appendix A. Examination of Seattle Municipal Court Observational Data

In conjunction with the SMC data analysis project, Alexes Harris was asked to review Seattle Municipal Court observational data she has been collecting as part of a larger eight state study funded by *Arnold Ventures*. The aim was to examine the extent to which ability to pay hearings were occurring at the time of LFO sentencing. We have a total of 200 hearing observations in SMC. The RA recorded a set of observational codes on a "court observation" coding sheet. A protocol used across court observations in the eight states of foci. **Table** 1 outlines the characteristics of the court type, offenses observed and characteristics of defendants before the court. In addition, the RA recorded hand written field notes on the types of discussions occurring between judges, attorneys and people brought before the court.

Unfortunately, only eight of the hearings the RA randomly observed involved sentencing hearings. As such, not much can be said about the frequency of whether or not ability to pay hearings were being held by SMC judges. Other hearings the RA observed included review hearings, cases involving bench warrants, competency, continuances, DUI pretrial, DV review, mental health review, pretrial, probation review and probation revocation. I also reviewed the field notes (searched for terms "pay" "ability to pay" and "fine" or "fee") no formal "hearings" or discussion of ability to pay.

Interestingly, I found in the text of the field notes frequent discussions between judges, attorneys and defendants about LFO sentences and other court imposed punishments with costs. Much of the discourse focused on people's inability to make any or regular payments. These discussions involved issues related to payment plans, the court imposed $25 community service fee (frequently waived), the $42 criminal conviction fee and probation costs. Several conversations focused on people's inability to find or make payments for court imposed alcohol or drug assessment and treatment. Frequently, people said they could not pay for this mandated sentence.

Table A.1. Summary of SMC Court Observations, 2017-2018 (N = 200 hearings).

	Number	Percentage
Court Type		
Criminal traffic	73	36
Gross misdemeanor	119	59
Misdemeanor criminal traffic	13	6
Type of offense		
Assault	28	14
criminal trespass	10	4
driving with suspended license	9	4
DUI	7	3.5
Domestic violence	7	3.5
Presence under influence of intoxicants	44	22
Reckless driving	13	6
Sexual exploitation	7	3.5
Theft	28	14
Sex		
Women	52	26
Men	148	74
Race/Ethnicity		
Asian	7	3
Black	57	28
Latinx	24	12
Middle Eastern	4	2
Native American	1	0.5
White	79	39
Unknown	7	3
Was not present	22	11
Custody Status		
In	39	20
Out	161	80

VII. Endnotes

[i] For example see Washington State RCW RCW 9.94A.777 https://www.courts.wa.gov/content/manuals/Superior%20Court%20LFOs.pdf

[ii] Alexes Harris, Heather Evans & Katherine Beckett. *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary U.S.* American Journal Of Sociology 115(6): 1755-99 (2010). In for a Penny: The Rise of America's New Debtors Prison. ACLU (2010). Criminal Justice Debt: A Barrier to Re-entry. (2010). Karin D. Martin, et al., *Monetary Sanctions: Legal Financial Obligations in U.S. Systems of Justice,* 1 Annual Review Of Criminology (2018).; Brittany Friedman & Mary Pattillo, *Statutory Inequality: The Logics of Monetary Sanctions in Sate Law,* 5 RSF: The Russell Sage Foundation Journal Of The Social Sciences (2019). Beth Colgan. *Wealth-Based Penal Disenfranchisement*. 72 Vanderbilt Law Review. (2019).

[iii] Alexes Harris, Heather Evans & Katherine Beckett, *Courtesy Stigma and Monetary Sanctions: Toward a Socio-Cultural Theory of Punishment*. American Sociological Review 76(2): 1-31(2011). Alexes Harris, *A Pound of Flesh: Monetary Sanctions as a Punishment for the Poor*. (2016). Alex Piquero and Wesley Jennings. *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders.* Youth Violence & Juvenile Justice 15(3):1-16. (2017). Leslie Paik & Chiara Packard. *Impact of Juvenile Justice Fines and Fees on Family Life: Case Study in Dane County, WI.* Philadelphia, PA: Juvenile Law Center. (2019).

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[v] https://apps.leg.wa.gov/rcw/default.aspx?cite=9.94A.760

[vi] Initially we were tasked with examining the frequency and outcomes for community service conversions, however there was no way to identify or track such cases. A suggestion for future court data collection efforts would be to create a data element that captures when a judge converts individuals conversation of LFO dollars to community service hours. Given the data set we used we are just not able to determine such instances.

[vii] http://www.courts.wa.gov/jislink/?fa=jislink.jis

[viii] Imai, K., & Khanna, K. (2016). *Improving Ecological Inference by Predicting Individual Ethnicity from Voter Registration Records. Political Analysis*, 24(2), 263-272. doi:10.1093/pan/mpw001

[ix] "Driving While License Invalidated" RCW 46.20.342. https://apps.leg.wa.gov/rcw/default.aspx?cite=46.20.342

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