



# **Centering Impacted Voices:**

## **Community Task Force Report on the Criminal Legal System**

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**September 2021**



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**Seattle**  
Office for Civil Rights

**“Bourgeois law protects property relations and not social relationships.”**

**“Crime is simply the result of a grossly disproportionate distribution of wealth and privilege, a reflection of the present state of property relations.”**

**George Jackson**

*Blood In My Eye*<sup>1</sup>

*Cover page image designed by Freepik.*

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<sup>1</sup> George Jackson, *Blood in My Eye* (Baltimore: Basic Classic Press, 1990).

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# Executive Summary

## Community Task Force on Criminal Legal System Realignment

The Community Task Force on Criminal Legal System Realignment (Task Force) was convened by the Seattle Office for Civil Rights (SOCR)<sup>2</sup> and Seattle City Council Central Staff<sup>3</sup> from September 2020 through May 2021 to provide recommendations for reform efforts targeted at institutions within the municipal criminal legal system in the City of Seattle.<sup>4</sup>

The Task Force started as nine community members in the Seattle and King County region who have been impacted by the criminal legal system (CLS), including the police, jail, courts, and probation systems. Each of us is deeply connected to and in relationship with the distinctive communities we come from and work alongside, who have also experienced impacts from the CLS. Our work is guided by principles of anti-racism, disability justice, gender justice, and, most importantly, accountability to Black, Indigenous, and People of Color communities disproportionately impacted by the CLS.

## Scope of Work

The primary objective of the Task Force, as the City intended, was to develop recommendations that will guide policy changes in the criminal legal system within Seattle, in order to 1) reduce as much harm as possible, and 2) prevent people from ending up in the system to begin with.

## Principles Of Community-Led Solutions

In this report, **we redefine key terms that are often used in discussion around CLS reform**, as these seemingly neutral terms have been used by institutions in ways that prioritize the safety and well-being of communities with more privileges at the expense of those without. These terms are:

- **Safety**
- **Harm Reduction**
- **Trauma-Informed Approach**

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<sup>2</sup> "Seattle Office for Civil Rights," Seattle Office for Civil Rights - CivilRights (City of Seattle), accessed September 14, 2021, <http://www.seattle.gov/civilrights>.

<sup>3</sup> "Council Central Staff," Council Central Staff - Council (City of Seattle), accessed September 14, 2021, <https://www.seattle.gov/council/committees/council-central-staff>.

<sup>4</sup> Seattle City Council, [CBA CJ-4-C-1](#) § (2019).

## → Accountability

**We also expand on the following as principles of community-led solutions.** These principles are intended to guide the City and CLS stakeholders in any measures taken towards reform.

**Principle 1:** Divest from the criminal legal system and invest in communities to strengthen and build up community infrastructures that can address actions otherwise classified as misdemeanor crimes under the CLS.

**Principle 2:** Support community capacity to respond to harms, independent of criminal legal system and City roles.

**Principle 3:** Provide resources and funding to community organizations to do preventative work.

**Principle 4:** Prioritize survivor support services and resources.

## Methodology

The Task Force utilizes a different paradigm for addressing the situations that often invoke the criminal legal system. The tenets of the criminal legal system as it exists in the US rely on five recognized goals: deterrence, incapacitation, rehabilitation, retribution, and restitution.<sup>5</sup> The Task Force, on the other hand, works from the premise that people and institutions of power create the conditions that people survive under, which routinely and disproportionately disenfranchise Black, Indigenous, People of Color, people with disabilities, and poor people. As such, **our goal is to prioritize addressing the conditions that invoke the criminal legal system in order to arrive at a fundamentally different vision of accountability from what the current system provides.**

## Task Force Policy Recommendations

The policies we recommend extend from the principles described above. These policy recommendations are aimed at identifying direct and specific areas that the City can intervene in to decenter CLS institutions as providers of safety, harm reduction, trauma-informed care, accountability, and responses to social problems.

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<sup>5</sup> Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (University of California Press, 2007).

<b>Recommendation #1</b>	<b>Do not rely on the CLS to address behaviors arising from unmet needs or behavioral health crises.</b>
<b>Recommendation #2</b>	<b>Address the root causes of CLS engagement.</b>
<b>Recommendation #3</b>	<b>Evaluate diversion programs for their ability to cause harm. Prioritize non-CLS responses over the expansion of diversion programs.</b>
<b>Recommendation #4</b>	<b>Electronic Home Monitoring (EHM) should not be used as an alternative to incarceration.</b>
<b>Recommendation #5</b>	<b>Create a workgroup of community experts and stakeholders to build alternatives to incarceration that address misdemeanor domestic violence.</b>
<b>Recommendation #6</b>	<b>Learn from the disability justice movement: End the practice of coercive mental health treatment &amp; the criminalization of people with disabilities.</b>
<b>Recommendation #7</b>	<b>Create a Just Transition for current CLS workers to transition into jobs that do not cause harm and serve a social good.</b>
<b>Recommendation #8</b>	<b>Avoid the use of data-driven and algorithm-based decision making tools in the CLS.</b>

## Report Structure

■ Acknowledgements
■ Part One: Background
■ Part Two: Principles of Community-Led Solutions
■ Part Three: Task Force Policy Recommendations
■ Conclusion

# Acknowledgements

The work reflected in this report was made possible by convening people who live on Coast Salish lands. We understand that our collective liberation, including the dismantling of the prison industrial complex, cannot happen without the sovereignty and resistance of our Indigenous relatives. We also acknowledge the historical and continued suffering of Black, Indigenous, and People of Color communities and poor people, with various intersections of race, gender, sexuality, disability, and immigration status, under the current criminal legal system. Many of our kin continue to experience the trauma and violence of incarceration. It is with hope for their freedom, our collective liberation, and the freedom dreams of generations that come after us, that we engage in this work.

We acknowledge and honor the incredible courage, labor, and contributions of our community members and movement-builders who paved the way to make the particular work within this Task Force possible, through various campaigns and initiatives over the years including but not limited to:

- Organizing to **demand justice for the police murder of [Nuu-chah-nulth First Nations woodcarver, John T. Williams](#)** in 2010.<sup>6</sup>
- The **No New Youth Jail** movement,<sup>7</sup> which continues to organize to stop the \$210 million project to build a new youth jail in Seattle.
- **Block the Bunker**,<sup>8</sup> which demanded divestment from the proposed \$160 million project to build a North Seattle Precinct.
- **La Resistencia**,<sup>9</sup> a grassroots organization fighting to close the Northwest Detention Center in Tacoma, WA that incarcerates up to 1575 immigrants per day.
- **Decriminalize Seattle**,<sup>10</sup> a coalition led by Black, Indigenous, and People of Color (BIPOC) community organizations and community members<sup>11</sup> pushing to Defund the

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<sup>6</sup> "JT William Organizing Committee," Facebook, Accessed September 14, 2021.

<https://www.facebook.com/JTWOrgCommittee/>.

<sup>7</sup> "About #Nonewyouthjail," CLOSE THE YOUTH JAIL NOW!, July 11, 2018. <https://nonewyouthjail.com/about/>.

<sup>8</sup> @blockthebunker, "Block The Bunker," Facebook, Accessed September 14, 2021.

<https://www.facebook.com/blockthebunker/>.

<sup>9</sup> La Resistencia, Accessed September 14, 2021, <http://laresistencianw.org/>.

<sup>10</sup> "Defund Seattle Police, Decriminalize Seattle," Decriminalize seattle, Accessed September 14, 2021.

<https://decriminalizeseattle.com/>.

<sup>11</sup> BAYAN USA Pacific Northwest, et al., "Defund Seattle Police March & Rally for Black Lives," Facebook, Accessed September 14, 2021, <https://www.facebook.com/events/304052440623106/>.



Seattle Police Department and invest those funds in community-led health and safety systems. This work is inspired by the work of [Movement for Black Lives](#)<sup>12</sup> and [Reclaim the Block](#)<sup>13</sup> and rooted in years of work opposing police and prisons in this region.

- **Black Brilliance Research Project**,<sup>14</sup> the largest Black-led community research project in the world. Through participatory action research, over 100 paid researchers and 100 volunteers asked community members three questions in order to inform the creation of a participatory budgeting process in Seattle: What creates true community health? What creates true community safety? And what do they need to thrive?
- **King County Equity Now (KCEN)**,<sup>15</sup> is “an ecosystem of Black-led, accountable community-based organizations, of Black elders, organizers, healers, youth, and families designing and implementing a new normal rooted in equity now. KCEN identifies and uplifts powerful equity solutions that, if followed, would bring the Black community to equity across all measurable metrics including, e.g., land, wealth, education, health, safety, organizational control and more.”

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<sup>12</sup> “#Defundthepolice,” Black Lives Matter, May 31, 2020, <https://blacklivesmatter.com/defundthepolice/>.

<sup>13</sup> “About Reclaim the Block,” Reclaim the Block, Accessed September 14, 2021, <https://www.reclaimtheblock.org/home>.

<sup>14</sup> LeTania Severe and Shaun Glaze, “[Black Brilliance Research Project](#)” (Seattle, WA, 2021).

<sup>15</sup> “Building Black Power,” King County Equity Now, Accessed September 14, 2021, <https://www.kingcountyequitynow.com/>.

# Part One: Background

## Context

The Community Task Force on Criminal Legal System Realignment (Task Force) was convened by the Seattle Office for Civil Rights (SOCR)<sup>16</sup> and Seattle City Council Central Staff<sup>17</sup> from September 2020 through May 2021 to provide recommendations for reform and realignment efforts targeted at institutions within the municipal criminal legal system (CLS) in the City of Seattle.<sup>18</sup>

The Task Force started as nine community members in the Seattle and King County region who have been impacted by the CLS, including the police, jail, courts, and probation systems. Convening the Task Force was a direct response to many years of community organizing and mobilization that continue to push institutional stakeholders and policymakers to end the harmful and violent policies and practices of the CLS, which disproportionately targets and impacts Black, Indigenous, and People of Color (BIPOC),<sup>19</sup> people with disabilities, poor and low-income people, and all marginalized communities.

These movements demand that any efforts to reform, realign, and/or transform the CLS be led by people who are directly impacted by the CLS. However, community engagement efforts spearheaded by institutional stakeholders and policymakers have historically been transactional, tokenizing, ineffective, and/or exploitative. **When the system creates initiatives and reforms based on community ideas and feedback, the results often look unrecognizable to those they emerged from.** The system adopts a watered-down version of these ideas as their own and puts people in the community as the face of new programs to protect their positions. This creates the illusion of change, when in actuality the system continues to perpetuate itself.

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<sup>16</sup> "[Seattle Office for Civil Rights](#)," Seattle Office for Civil Rights - CivilRights.

<sup>17</sup> "[Council Central Staff](#)," Council Central Staff - Council.

<sup>18</sup> City Council, "GS 12-22-A-1-2019," GS 12-22-A-1-2019 § (2019); City Council, "[19-1-B-1-2019](#)," 19-1-B-1-2019 § (2019).

<sup>19</sup> Throughout this report we use Black, Indigenous, and People of Color (BIPOC) to refer to individuals and communities who are racially marginalized and oppressed within the current structures of systemic racism, white supremacy, and settler colonialism within the U.S. We recognize the limitations of this term, including that it risks categorizing many different communities with many different racial identities within one or more racial groups. We acknowledge that it does not reflect the myriad of ways that people choose and prefer to identify.

*“It constantly seems like something happens and the City feels like they need to put something together to pacify the community. These pilot or new projects are formed to supposedly get at the issue, but there is never an end result. ...They bring us to the table [but] we’re never validated in compensation or acknowledgement. It happens all the time. They utilize all of our skills, and they are just like, “yes, yes, yes,” and then they backpedal because they do not have the courage to do what is right. ... They come into our circle, they learn from what we are putting forth, and then they take it and utilize it for their work and say it is theirs.”*

**KL Shannon**  
Task Force Member

## Who We Are

We come to this work with depth and breadth of lived experience and expertise. Each of us has seen the cyclically harmful impacts of the CLS personally, and the knowledge and insights we bring from our lived experiences are powerful. **We are in this work because we want to put a stop to the harmful cycle of the CLS – for ourselves, our families, our communities, and for generations to come.**

Each of us is deeply connected to and in relationship with the distinctive communities we come from and work alongside, who have also experienced impacts from the CLS. We have a deep commitment to practicing accountability to our communities in this work. **However, we acknowledge that our communities are not monolithic, and we cannot speak for or represent all communities impacted by the CLS.** We therefore need continued advocacy for more perspectives, more nuance and diversity of lived experiences, and leadership for people who hold intersectionalities not reflected in our group.

### **A Note: Challenges to Community Engagement Around Criminal Legal System Reform Efforts**

Community engagement led by the City to promote policy recommendations often falls short for many reasons, including the following:

**1) The existing power dynamic between the City and individual community members.**

Community engagement spaces convened by the City frequently do not encourage the building of collective community power but rather uphold a power distribution that favors maintaining the status quo.

- 2) **Privileging of technical legal knowledge over experiential knowledge of the CLS & lack of investment in community to navigate the CLS.** There is little to no effort provided by the City to equip community members with the technical and legal knowledge of the system. This barrier is particularly salient when it comes to reform of the legal system. This is accompanied by the devaluing of knowledge derived from lived experience of the CLS, especially in policy making. The prominence and power of jailhouse lawyers, a term used to describe incarcerated people who are knowledgeable about criminal law without formal training, give us an insight into how much study it takes to adequately intervene in the CLS.
- 3) **The use of community engagement to legitimize the status quo.** All too often community engagement efforts are used merely to check a box. We are often not part of creating and envisioning policies, but we are brought into processes late when outcomes are already determined.

While the work of the Task Force is embedded within broader institutional efforts to realign the CLS in Seattle, we resist efforts that co-opt or tokenize our work. **We are the experts in this work, and our work should not be directed by the agenda or the timeline of the system.** Our community is brilliant, and we hold solutions; however we aren't adequately resourced to make the necessary changes, often bound by the bureaucracy and rules of the system. We maintain that if policymakers want community members to engage in reshaping the CLS, they need to invest in us meaningfully and authentically. Ultimately, we need pathways led by community members without the influence of institutional cultures, corporate and class interests, lack of transparency, and bureaucracy.

## Scope of Work

### Purpose

The goal of the Task Force is to develop recommendations that will guide policy changes around Seattle's criminal legal system (CLS) for two purposes: 1) to reduce the harm of the system, and 2) to prevent people from entering the system.

However, the CLS still exists as a part of the broader infrastructure of state-sanctioned policies and white supremacist, colonial, and capitalist structures that disenfranchise, devalue, exploit, and oppress Black, Indigenous, and People of Color (BIPOC), people with disabilities, and poor people, often leading to our "premature deaths."<sup>20</sup> Compartmentalizing CLS reform as a distinct area of work apart from other institutional policies related to

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<sup>20</sup> Gilmore, Golden Gulag.

housing, transportation, education, labor, and other areas weakens our collective community organizing.

This also reduces the topic of CLS reform as separate and isolated from other institutional policies that shape the lives of poor people, even though they are distinctly intertwined. The City powerbrokers – the City Council, the Mayor, and other institutional players – create the conditions for the City’s disparate racialized wealth gap and perpetuate institutional harm in our communities through policing, gentrification, housing policies, transportation policies, and other policies, that feed the offenses that move through the Seattle Municipal Court.

We push back against this white supremacist epistemology. We call for a deeper change than the typical classification of CLS reform, even though the City may distort our requests and recommendations and inadvertently fall short of our visions. **We ultimately produce this document for our communities to reference in future organizing efforts.**

## **Timeline**

Our work occurred in three phases over the course of nine months (September 2020 through May 2021):

### **Phase I: Establishing a Common Framework**

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The Task Force explored frameworks used in the spectrum of criminal legal reform and studied the landscape of alternatives and replacement of the local CLS. We also prioritized relationship-building with one another and developed shared values and principles.

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### **Phase II: Local Reform Efforts and Community Alternatives to CLS Approaches**

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The Task Force focused on learning about both institutional and community efforts to reduce the harm of the CLS and/or reduce the need for CLS engagement. Community organizations<sup>21</sup> and institutional stakeholders<sup>22</sup> joined us to present on and discuss the following topics:

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- Housing as a solution to CLS involvement
  - Police accountability
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<sup>21</sup> Community organizations include DESC, Chief Seattle Club, King County Equity Now, Decriminalize Seattle, the Northwest Community Bail Fund, CHOOSE 180, API Chaya, Collective Justice, and Community Passageways.

<sup>22</sup> Institutional stakeholders include Seattle Municipal Court (SMC), City Attorney’s Office (CAO), Community Police Commission (CPC), Office of Police Accountability (OPA), and Office of the Inspector General (OIG).

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- Civilian 911

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  - Prefiling diversion

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  - Pretrial detention

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  - Bail reform

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  - Probation

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  - Community court

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  - Alternatives to incarceration
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### **Phase III: Local Reform Efforts and Community Alternatives to CLS Approaches**

The Task Force took time to reflect, harvest, and synthesize the material covered in the first two phases. We then developed policy recommendations targeted at three institutions that have influence on the CLS within Seattle: the Seattle City Attorney’s Office (CAO),<sup>23</sup> the Seattle Municipal Court (SMC),<sup>24</sup> and the Seattle City Council.<sup>25</sup> We met with each institution, presented our recommendations, and engaged in discussion.

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## **Focus of Recommendations: The Municipal Criminal Legal System in Seattle**

The Seattle municipal criminal legal system oversees adult misdemeanors and certain juvenile driving offenses, while adult felonies and juvenile misdemeanors are handled by King County. The institutions displayed in the chart on the following page constitute the main players in the Seattle municipal criminal legal system.

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<sup>23</sup> “Seattle City Attorney,” Seattle City Attorney - CityAttorney (City of Seattle), Accessed September 14, 2021. <https://www.seattle.gov/cityattorney>.

<sup>24</sup> “Seattle Municipal Court,” Courts - Courts, (City of Seattle), Accessed September 14, 2021. <https://www.seattle.gov/courts>.

<sup>25</sup> “Seattle City Council,” Seattle City Council - Council (City of Seattle), Accessed September 14, 2021. <https://www.seattle.gov/council>.

## MUNICIPAL LEGAL SYSTEM IN SEATTLE

LAW ENFORCEMENT	INCARCERATION	PROSECUTING OFFICE	COURT
<b>Seattle Police Department (SPD)</b>	<b>King County Jail*</b>	<b>City Attorney's Office** (CAO)</b>	<b>Seattle Municipal Court (SMC)</b>
<ul style="list-style-type: none"> <li>• Arrests and books individuals into the King County Jail on misdemeanor offenses.</li> <li>• Investigates and refers misdemeanor offenses to the City Attorney's Office for review.</li> </ul>	<p>Incarcerates individuals who are:</p> <ul style="list-style-type: none"> <li>• Booked into jail by SPD for misdemeanor offenses.</li> <li>• Awaiting arraignment and/or trial and did not qualify to be released on personal recognizance (PR), or did not qualify or cannot afford to be released on bail.</li> <li>• Sentenced to incarceration for less than one year for misdemeanor offenses.</li> </ul>	<ul style="list-style-type: none"> <li>• Sets standards for which offenses will be prioritized for prosecution.</li> <li>• Reviews cases and decides whether or not to file charges based on their discretion.</li> <li>• Prosecutes all cases where an individual is charged with a misdemeanor offense.</li> </ul>	<ul style="list-style-type: none"> <li>• Determines whether individuals can be released from jail under certain conditions while awaiting arraignment and/or trial.</li> <li>• Sets bail amounts.</li> <li>• Handles arraignment and trial.</li> <li>• Handles guilty pleas, determines verdict at bench trials.</li> <li>• Handles sentencing.</li> </ul>

*\*Seattle has a contract with King County Jail.*

*\*\*The City Attorney is an elected office.*

## Institutional Racism In The Current Seattle Criminal Legal System

The inherent racism in the U.S. criminal legal system, which disproportionately harms Black, Indigenous, and People of Color (BIPOC), is well known and well documented at this point. Racial disparities that target Black communities in particular are evident in every aspect of the CLS, as demonstrated in the “2018 Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System” by The Sentencing Project (see below).<sup>26</sup>

### Racial Disparities in the U.S. Criminal Justice System\*

**Policing:** In 2016, Black people comprised 27% of all individuals arrested in the United States—double their share of the total population.

**Pretrial:** African Americans<sup>27</sup> were incarcerated in local jails at a rate 3.5 times that of non-Hispanic whites in 2016.

**Sentencing and incarceration:** Although African Americans and Latinos comprise 29% of the U.S. population, they make up 57% of the U.S. prison population. This results in imprisonment rates for African-American and Hispanic adults that are 5.9 and 3.1 times the rate for white adults, respectively—and at far higher levels in some states.

**Parole:** Among sentences that allow for discretionary parole release, the process can be harder for [Black, Indigenous, and People of Color].

**Post Prison/Collateral Consequences:** African Americans—particularly black men—are most exposed to the collateral consequences associated with a criminal record. In 2010, 8% of all adults in the United States had a felony conviction on their record. Among African-American men, the rate was one in three (33%). People with criminal records face a host of obstacles to re-enter society even after they have fully completed their term of incarceration or community supervision. These include barriers to securing steady employment and housing, to accessing the social safety net and federal student aid, and to exercising the right to vote.

*\*This data was reproduced directly from the Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System submitted by The Sentencing Project in 2018.<sup>28</sup>*

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<sup>26</sup> [“Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System”](#) (Washington, D.C. The Sentencing Project, 2018).

<sup>27</sup> In our report we use the term Black people and Black communities to refer to people of the African diaspora and people of African descent living in the U.S. (instead of African American, African-American, or black men, as used in this report from The Sentencing Project).

<sup>28</sup> Ibid.



## Racial Disparities in Misdemeanor Arrests, Referrals, and Charges in Seattle

Even though misdemeanor arrests have been dropping overall in Seattle since 2008, Black, Indigenous, and People of Color continue to be arrested, incarcerated, and sentenced at rates which are disproportionate to the general population.

A 2018 Seattle University research project on “Trends in Misdemeanor Arrests, Referrals, & Charges in Seattle” shows that Black and Indigenous people were arrested at much higher rates than white and Asian people in Seattle in 2016:<sup>29</sup>

- Approximately 1 in 10 Black and Indigenous people were arrested by SPD for misdemeanor charges.
- While Black people only make up 7 percent of the population, 31 percent of all arrests in Seattle were of Black people. The arrest rate was four times more than the share of Seattle’s Black population.
- Indigenous people are only 0.6 percent of the Seattle population, but account for 3.3 percent of all arrests. This is five times more than the overall Indigenous population in Seattle.
- Compared to their respective proportions of the total population of Seattle, white and Asian people were underrepresented in misdemeanor arrests by SPD.

## Racial Disparities in Pretrial Release and Pretrial Detention

Black, Indigenous, and People of Color are also disproportionately harmed by discriminatory practices utilized in pretrial release and pretrial detention. When an individual is booked into the King County Jail on a violation of the Seattle Municipal Code, the court system creates several possible paths that may provide release. However, each path requires a court employee to make decisions based on limited information and an assessment of the defendant’s perceived past behavior to predict future behavior. The outcome of these processes reflect a system that disproportionately harms Black and Indigenous individuals.

After an individual is booked, they are usually screened for eligibility to be released prior to their arraignment or trial. This is conducted by SMC’s personal recognizance (PR) screeners and occurs between booking and prior to an individual’s first appearance before a judicial

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<sup>29</sup> Jaqueline B. Helfgott, “[Trends in MISDEMEANOR ARRESTS, REFERRALS, & CHARGES in Seattle- Final Report](#),” Seattle, WA, 2018.

officer.<sup>30</sup> The PR screener may **release on personal recognizance**, which means the individual can be released without posting bail or **hold or deny release on personal recognizance**, which means the individual is held, and a release decision will be made by a judicial officer. In other cases, an individual is given the option to post **default bail**, which is a predetermined amount of bail based on the criminal charge. However, even if the option to post default bail is provided, many individuals cannot afford to post bail and thus remain incarcerated.

Unsurprisingly, pretrial release rates reflect and reinforce the racism and classism inherent in the CLS. According to SMC's own 2015 study of a small sample of court defendants, 100 percent of Indigenous people and 94 percent of Black people were denied release on personal recognizance at the PR screening stage. These are significantly higher percentages than for Asian and white people denied PR at the same stage (83 and 85 percent, respectively).<sup>31</sup>

Even for a few days, pretrial detention damages individuals, both in the short and long term. In the short term, pretrial detention can cause loss of housing, loss of employment, separation from familial and community supports, and negative mental health impacts. Pretrial detention can also serve as a form of coercion by incentivizing individuals into taking plea bargains offered by prosecutors.<sup>32</sup> Many people who are incarcerated at the pretrial stage plead guilty even if innocent, resulting in a conviction on their record, which then creates additional barriers to housing and employment in the future.<sup>33</sup> These short-term impacts create long-term disruption in people's lives that trap people in the system, a negative feedback loop that further harms Black, Indigenous, People of Color, and people who are houseless, poor, and low income.<sup>34</sup>

The paragraphs above highlight only some ways Seattle's CLS perpetuates racism in court practices and procedures. We recognize these have been identified and raised ad nauseam, but we feel compelled to do so again and will continue to do so until the City, Councilmembers, the Mayor, and other institutional stakeholders make immediate interventions and changes in the Municipal Court system to mitigate this harm.

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<sup>30</sup> SMC Research, Planning and Evaluation Group, "[Pre-Trial Releases at Seattle Municipal Court](#)," Seattle, WA: The Municipal Court of Seattle, 2015.

<sup>31</sup> SMC Research, Planning and Evaluation Group. Rep. [Pre-Trial Releases at Seattle Municipal Court](#).

<sup>32</sup> Robert C. Boruchowitz, "[Minor Crimes. Massive Waste The Terrible Toll of America's Broken Misdemeanor Courts](#)" (Washington, DC: National Association of Criminal Defence Lawyers, 2009).

<sup>33</sup> Léon Digard and Elizabeth Swavola, "[Justice Denied: The Harmful and Lasting Effects of Pretrial Detention](#)" (New York: Vera Institute of Justice, 2019).

<sup>34</sup> This report utilizes person-first language to refer to people who have been historically marginalized and dehumanized. By putting a person before a diagnosis or condition, we emphasize the humanity of the person, and that the individual is not defined solely by their condition or diagnosis.

The Municipal Court system is an outdated and ineffective solution to the problems that are categorized as “misdemeanor crimes.” More far-reaching, upstream solutions rooted in policies related to housing, public health, behavioral health, are more effective, pressing, and necessary. We implore institutional stakeholders who may benefit from the system to recognize the obsolescence of the current CLS as a constructive institution.

# Part Two: Principles of Community-Led Solutions

As the Task Force discussed principles to guide our recommendations to realign the City's criminal legal system (CLS), we realized that it was necessary to reframe key terms that we use in these conversations such as safety, accountability, and harm. The use of these terms by institutions unintentionally prioritizes the safety and well-being of privileged communities, often at the expense of those with less privilege.

For example, the notion of safety or public safety is sometimes used to measure rates of crime and perceived risk of crime against individuals and properties. For those in privileged communities, risk or rates of crime are associated with people outside of their population or communities. This often leads to increased and more severe law enforcement response to manage the perceived risk and fear. The demand for safety and order coming from those with privilege and political access can actively undermine safety for community members who are associated with crimes or disorder by marshaling hostile state actions toward the latter in order to bring about a sense of peace and order for the former.<sup>35</sup>

We insist that the City do not distort these terms when using them to describe its interventions. Any meaningful discussion of the CLS, or in this case the misdemeanor system, would exclude the use of coercion and institutional violence in the form of the police, courts, jails, and probation, which do not have the experience or framework to effectively address the need for safety, harm reduction, trauma-informed care, or accountability. **We call on the City to support those who are practiced in operating with these frameworks, rather than substituting their expertise for CLS interventions cloaked in misrepresented terms and concepts.**

## Redefining Key Terms

### Safety

We define safety as a state of physical, emotional, economic, and mental well-being, as well as freedom from threat, coercion, and state violence. We support safety for all, but especially

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<sup>35</sup> Kalie Greenberg, "King County Addresses Community Concerns over Redmond Hotel Slated to House Homeless," king5.com (King5, September 3, 2021), <https://www.king5.com/article/news/local/king-county-addresses-community-concerns-over-redmond-hotel-slated-to-house-homeless/281-194a608c-b491-453e-8bd2-7016264688a7>.

for those who have been historically excluded from the City's conception of what constitutes a safe city, including Black, Indigenous, and People of Color (BIPOC) and poor people who are often targets of state and non-state violence; people with disabilities and people experiencing mental health crisis; people who are houseless; people who use substances and/or who engage in sex trade; and youth, especially youth of color who are impacted by the child welfare, public school, and juvenile justice systems.

**We believe that in order to make our communities safer, we must address institutions that directly cause harms, as well as root causes of the unsafe circumstances we experience, including the police, jails and other sites of confinement, poverty, and the criminalization of poverty, homelessness, substance use, and sex trade.**

We further prioritize safety for our community members — for human lives — over property. We believe the valuing of human life over dead and non-living matter is what makes a society humane.

### **Harm Reduction**

We define harm reduction as a set of policies and practices that are rooted in principles of autonomy, justice, and human rights and that reduce negative health, social, and legal impacts of substance use and other socially stigmatized behaviors. While the harm reduction approach has been most widely adapted in response to substance use challenges, it is applicable to a broader range of policies that are intended to support communities and address problems.

**Harm reduction has a legacy rooted in grassroots movements for liberation, health, and anti-racism. It has always been a movement for social justice, premised on the fact that marginalized communities know best how to meet their community's needs.** Harm reduction recognizes that the harms associated with various behaviors often reflect social inequities and therefore necessitate shifts in policy, rather than pathologization of the individual. Harm reduction movements have included LGBTQ communities advancing a collective response to the HIV crisis such as ACT UP (AIDS Coalition to Unleash Power) beginning in the 1980's. It also included drug users organizing syringe service clinics when the HIV crisis began to ensure safety for one another at a time when communities most impacted were stigmatized, criminalized and shunned by legal and medical institutions alike.<sup>36</sup> It is crucial to remember this legacy as the CLS continues to warp the spirit and usage of this term.

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<sup>36</sup> "Support Act Up, Donate & Get Act up Gear" (ACT UP NY, May 13, 2021), <https://actupny.com/>; "Evolution of Harm Reduction," National Harm Reduction Coalition (National Harm Reduction Coalition, September 2, 2020), <https://harmreduction.org/movement/evolution/>.

**Harm reduction policies and practices focus on goals and priorities as determined by the impacted individuals, and supporting people without judgment, coercion, discrimination, or stigma.** Harm reduction principles question the requirement that people make specific changes (e.g. stop using substances or engaging in sex trade) as a precondition of receiving support. Harm reduction tactics include: safe consumption sites and services, syringe service programs, low barrier housing through a house first model, accessible social programs, and overdose prevention and responses, including naloxone distribution. Another emerging theme rooted in harm reduction is the concept of safe supply, which operates through providing a safe, regulated supply of substances to decrease harms of an unsafe supply as both an overdose response and a means to recovery. It must be understood that these types of responses in the harm reduction framework recognize that people often use drugs for legitimate reasons. Those reasons range from resolving historic and current trauma, survival mechanisms, creating health care interventions outside of a system that is frequently inaccessible, and more.

**Harm reduction is not compatible with replacing incarceration with other forms of surveillance and coercive control over people's lives, such as treatment under the threat of criminal punishment as in many diversion programs.** Diversion programs may offer improvement over incarceration, but they should not be considered harm reduction as long as they rely on the coercive power of the state (see [Recommendation #3](#)).

Harm reduction also proactively supports and builds up community infrastructures based on safety, relationships, and trust, and is guided by principles and standards established by each community. Finally, harm reduction addresses societal causes of the disproportionate distribution of stigmatized behaviors, such as poverty, racism, and sexism.

### **Trauma-Informed Approach**

A trauma-informed approach must be reframed from its common usage. **In addressing harmful behaviors to oneself or community, a trauma-informed approach assumes that nobody is inherently violent or abusive, that we have all been traumatized by our surroundings to different degrees due to a combination of our societal positionality and individual luck, and that we have learned to cope by any means necessary.** Some of these trauma responses have developed into patterns of behaviors that may cause further harm to ourselves or others.

Being trauma-informed means that we look at each person's struggle through a lens which asks how problematic behaviors developed in order to survive and cope with developmental trauma. This perspective is distinct from the judgmental and punitive model that considers

harmful actions of individuals as failures of character that need correction through punishment.

**Understanding each person’s trauma responses does not mean that our actions are excused: we are still responsible for mending and redressing any harms we have caused.** But we can hold individuals and their surrounding communities accountable without assigning totalizing judgment and moral blame on the person, or separating and isolating them from their community.

### **Accountability**

We view accountability for behaviors that cause harm from three different levels, with all of them sharing the goal of humanizing all parties involved. **We support accountability based on relationships and communities that promote positive change and responsibility, not those based on punishment and retribution.**

**On an individual level**, we support community-based solutions that develop an individual’s capacity to recognize, end, and take responsibility for harm they cause. **On a community level**, we look at the role(s) that the surrounding community may have played to ignore, minimize, and sometimes encourage harmful behaviors. **On a societal level**, we recognize the need to address root causes of harmful behaviors — systemic oppression, intergenerational trauma, and poverty. All of these levels must be addressed simultaneously, while also attending to the well-being and safety for survivors and people who have been on the receiving end of the harm.

*“Accountability with relationships feels like love;  
Accountability without relationships feels like abuse.”*

**David Heppard**  
Task Force Facilitator

## **Principles of Community-Led Solutions**

With these reframing of key terms, we identify the following principles for developing community-led solutions to increase safety and reduce harms:

**1) Divest from the criminal legal system and invest in communities to strengthen and build up community infrastructures that can address actions otherwise classified as misdemeanor crimes under the CLS.**

The CLS is based on the state's power to incarcerate and punish community members. It lacks mechanisms to achieve safety and accountability in ways that are meaningful and contribute positively to marginalized communities. Therefore, resources should be divested from the CLS and invested in community-led solutions that can better support the needs of our communities with genuine harm reduction and trauma-informed policies.

**2) Support community capacity to respond to harms, independent of the CLS and city roles.**

Community-based organizations need to be well-resourced to offer programs and services based on community needs for safety, harm reduction, and accountability. The City's CLS partnerships with communities should expand beyond just diversion programs. The City should support community organizations to build capacity and infrastructure to address wider concerns of their respective communities, rather than meeting goals as determined by the CLS.

**3) Provide resources and funding to community organizations to do preventative work.**

Prevention is more humane and cost-effective than responding to harms after they occur. Community resources based on harm reduction and trauma-informed approaches can help improve the overall well-being of communities and also prevent harms.

**4) Prioritize survivor support services and resources.**

Restoration and recognition of harm is central for healing. Principles of survivor support include distinguishing between losses incurred by individuals from that of big businesses and corporations. Big businesses and corporations have access to insurance compensation for losses incurred, a course they can pursue without any court intervention or procedures. That is distinct from the losses incurred as a result of horizontal violence among community members. We center the needs of individuals who have experienced harm and prioritize their healing and needs that are not centered on retribution. We must build resources to offer safety, self-determination, and repair.



# Part Three: Task Force Policy Recommendations

## Paradigm and Methodology in Proposed Policy Recommendations

The tenets of the criminal legal system (CLS) as it exists in the US rely on five recognized goals: deterrence, incapacitation, rehabilitation, retribution, and restitution.<sup>37</sup> These goals assume that an individual's actions are the sole factor in the trespasses that occurred, and they ignore environmental and material context; absent from them is an investigation of the social conditions that lead up to the situations that arise. This results in a dehumanization of the individuals involved, without any analysis of social pressures, mental health status, or conditions.

This language of personal accountability leveraged by the system against individuals who are implicated in the CLS obscures the role of the City and its institutions in perpetuating unsafe conditions, whether through insufficient housing and healthcare policies, the escalation of violence through the police, and/or other institutional harm.

**The Task Force utilizes a different paradigm to address the situations that invoke the CLS, instead working from the premise that people and institutions of power create the conditions that people survive under, which routinely and disproportionately disenfranchise Black, Indigenous, People of Color, people with disabilities, and poor people.**

The Task Force recognizes the correlation between changing environmental and material conditions within the city and the offenses that are criminalized by the Seattle Police Department (SPD), City Attorney's Office (CAO), and Seattle Municipal Court (SMC). Our discussion of the CLS and the necessary reforms to reduce its harm are not separate from the broader context from which these laws emerge. We do not compartmentalize life and survival the way institutions so often do. We aim to arrive at a fundamentally different vision of accountability from the system players, SPD, CAO, and SMC notwithstanding. It is from this place of re-examining institutional complicity in the shaping of racist and harmful society that our recommendations emerge.

**We also identify the misdemeanor system as part of a broader trajectory of assault on people who are poor and houseless in the city.** It is impossible to discuss the misdemeanor court system in Seattle, the SMC, without acknowledging that it disproportionately targets

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<sup>37</sup> Gilmore. Golden Gulag.

the poor — specifically the houseless — population in Seattle. In 2019, 90 percent of all were considered indigent and qualified for public defense.<sup>38</sup> The City’s condoning of the wealthy’s power in shaping city politics, whether through the Mayor’s Office or City Council, indicates our current climate of enacting anti-poor policies. The pressures that City Councilmembers faced from corporations when they attempted to legislate the Head Tax in 2019 reveal how corporations, property, and capital can shape the political landscape in this city.<sup>39</sup>

### **The High Barrier Individuals Working Group (HBIWG): An Unworkable Solution**

In 2019, the Mayor’s Office proposed the High Barrier Individuals Working Group (HBIWG). The HBIWG identified individuals in the city as a problem to be solved, for their utilization of the city’s jails and hospitals.<sup>40</sup> The HBIWG proposed reshaping the CLS in ways that would continue to surveil people under the premise of offering services and individualizing care. We have objections with the ideologies underlying this framing, mainly the dehumanization of people who are houseless and poor as problems needing to be solved, rather than full people with complex lives whose struggles are in large part a product of Seattle’s changing landscape. **Furthermore, we object to the relationship between service provision and surveillance.** Services that require contact with the CLS as a prerequisite are suspect and traumatizing. Healing, recovery, and rehabilitation are almost impossible under this framework.

The HBIWG’s convening by the Mayor’s Office coincided with the City’s discussions around the Mandatory Housing Affordability (MHA) legislation.<sup>41</sup> The MHA legislation was only a small part of the larger controversy around a system rooted in the commodification of housing. While it allowed for the upzoning of high rises in the city to address the growing density of the population, MHA allowed for an expansion of market rate housing to proliferate in the city. It did not prevent the displacement of low-income communities from their neighborhoods.<sup>42</sup> The lack of affordable, permanent, and long term housing is identified by

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<sup>38</sup> King County Department of Public Defense 2021 Annual Report [2021-DPD-Annual-Report\\_reduced.ashx](https://www.kingcounty.gov/2021/06/15/2021-DPD-Annual-Report-reduced.aspx) ([kingcounty.gov](https://www.kingcounty.gov))

<sup>39</sup> Schofield, Kevin, et al., “Council Repeals the Head Tax,” (Seattle City Council Insight, June 13, 2018). <https://sccinsight.com/2018/06/12/council-repeals-the-head-tax/>.

<sup>40</sup> Kamaria Hightower, “Members of Region’s High Barrier Individuals Working Group Announce New Pilot Programs to Focus on Individuals Cycling through the Criminal Justice System in Seattle and King County,” Office of the Mayor (City of Seattle September 12, 2019).

<sup>41</sup> “Council Passes Mandatory Housing Affordability Legislation,” Council Connection, City of Seattle, Accessed September 15, 2021 (Seattle, WA: City of Seattle, 2019).

<sup>42</sup> Puget Sound Sage, “Puget Sound Sage,” Puget Sound Sage (blog) (Puget Sound Sage), accessed September 15, 2021, <https://www.pugetsoundsage.org/why-we-need-comprehensive-strategy-to-stop-displacement-alongside-mha/>; Carolyn Bick, “Seattle’s Own Housing Affordability Efforts Could Worsen Displacement” (South Seattle Emerald, February 19, 2020).

House Our Neighbors,<sup>43</sup> Lived Experience Coalition,<sup>44</sup> and countless other housing advocates as crucial for addressing the housing crisis.

Lack of safe, secure, permanent, and affordable housing is only one facet of the ways in which poor communities are impacted by the City's laws. **The City also contributes to the criminalization of poor, houseless communities, and people with disabilities, through the determined absence of alternatives to 911 that could meaningfully address crises without the presence of the police.** The unnecessary deaths of Charleena Lyles and John T. Williams from interactions with the police, when a non-armed response could have addressed their situations, are only some of the manifestations of police violence and state-sanctioned murder. Furthermore, the City has broken its promises around access and availability of harm reduction services<sup>45</sup> such as Safe Consumption Sites, despite allocated funding via Council and the Mayor's Office to address the escalating numbers of methamphetamine and opioid overdose deaths.<sup>46</sup>

**Needless to say, the City's best known public display of anti-homeless politics takes the form of encampment sweeps, which continue to be on the rise.** Even during the COVID-19 pandemic, where CDC guidelines indicated that encampments should be left alone for public health reasons and in which there is a lack of shelter due to necessary COVID-19 adaptations, the City continues to sweep encampments.<sup>47</sup> The reality is that people live in public spaces as a means of survival because of our lacking housing system – local documentation indicates that 98 percent of people experiencing homelessness would accept housing as opposed to emergency shelter to resolve their homelessness.<sup>48</sup>

This list of how City policies set up poor people, disproportionately Black, Indigenous, and People of Color for increased interactions with the police and the CLS is not exhaustive. This causality informs the spirit of our recommendations.

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Will Sweger, "Beacon Hill Community Rallies To Denounce Esther 'Little Dove' John's Displacement" (South Seattle Emerald, Oct 28, 2017).

<sup>43</sup> "House Our Neighbors!" HOUSE OUR NEIGHBORS!, Accessed September 15, 2021, <https://www.houseourneighbors.org/>.

<sup>44</sup> @WeAreLEC, "Washington State Lived Experience Coalition" Facebook Accessed September 15, 2021, <https://www.facebook.com/WeAreLEC/>.

<sup>45</sup> "Overdose Deaths," King County, accessed August 16, 2021, <https://kingcounty.gov/depts/health/examiner/services/reports-data/overdose.aspx>.

<sup>46</sup> "Morning Crank: Taxing Uber and Lyft; Stalling Safe Consumption" (PubliCola, September 11, 2018). <https://publicola.com/2018/09/11/morning-crank-taxing-uber-and-lyft-stalling-safe-consumption/>.

<sup>47</sup> Luke Brennon, "Sweeps Continue in Seattle: Perspectives from the Street," South Seattle Emerald, June 14, 2021, <https://southseattleemerald.com/2021/06/14/sweeps-continue-in-seattle-perspectives-from-the-street/>.

<sup>48</sup> Applied Survey Research (ASR), "[Count Us In: Seattle/ King County Point-In-Time Count of Persons Experiencing Homelessness](#)" (Seattle, WA: All Home King County, 2018).

## Values Informing Recommendations

Our recommendations are centered around certain premises.

**First, we recognize that the criminal legal system is an extension of racist, white supremacist policy-making aimed at controlling and punishing the poor.** The impacts are felt most acutely by Black, Indigenous, People of Color, and poor people. We uniformly reject any expansion of the system under the rhetoric of reform.

**Second, we believe that support for marginalized communities should not be predicated on ongoing surveillance.** Care should be offered as a baseline of existence in the City, not triggered by violation and apprehension. Our communities' access to services, care, and support should be unconditional, not provided solely as a condition of diversion, whether the diversion is offered pre-filing, pre-trial, or otherwise.

**Third, we reject policing and surveillance by other means.** Exposing the failings of the current CLS system can sometimes fuel short-sighted arguments justifying its expansion. We reject the use of "soft policing" and surveillance that mask the violence of the CLS through the rhetoric of care and social services. For example:

- SMC intended to rebrand probation officers as probation counselors.<sup>49</sup> Social workers should not be deputized as arms of state surveillance.
- In the form of jails, it can justify the construction of new facilities rather than a complete closure. King County had planned to expand the juvenile jail population under the guise of providing more trauma-informed services.<sup>50</sup> Community organizing under the No New Youth Jail banner disrupted these plans.<sup>51</sup>
- Decarceration from a brick and mortar building is increasingly replaced by electronic home monitoring (EHM). EHM is another form of surveillance and allows the CLS to disassociate from the travesties associated with the King County Jail.<sup>52</sup> See [Recommendation #4](#) for more on EHM.

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<sup>49</sup> Kamaria Hightower, "[Members of Region's High Barrier Individuals Working Group Announce New Pilot Programs to Focus on Individuals Cycling through the Criminal Justice System in Seattle and King County](#)," Office of the Mayor (City of Seattle, September 12, 2019).

<sup>50</sup> Ansel Herz, "Lawsuit: King County Mised Voters on Levy to Build New Youth Jail," *The Stranger: Slog* (The Stranger, April 26, 2016).

<sup>51</sup> "Close the Youth Jail Now!" CLOSE THE YOUTH JAIL NOW! Accessed September 15, 2021, <https://nonewyouthjail.com/>; Elizabeth Turnbull, "[King County Unveils Plans to Shut Down CFJC Youth Detention Center and Seattle Jail by 2025, Activists Demand Closure Now](#)" (South Seattle Emerald, July 22, 2020).

<sup>52</sup> Gregory Roberts, "Justice Blasts Jail Conditions," *seattlepi.com* (Seattle Post-Intelligencer, March 22, 2011), <https://www.seattlepi.com/local/article/Justice-blasts-jail-conditions-1256409.php>.

# Policy Recommendations

<b>Recommendation #1</b>	<b>Do not rely on the CLS to address behaviors arising from unmet needs or behavioral health crises.</b>
<b>Recommendation #2</b>	<b>Address the root causes of CLS engagement.</b>
<b>Recommendation #3</b>	<b>Evaluate diversion programs for their ability to cause harm. Prioritize non-CLS responses over the expansion of diversion programs.</b>
<b>Recommendation #4</b>	<b>Electronic Home Monitoring (EHM) should not be used as an alternative to incarceration.</b>
<b>Recommendation #5</b>	<b>Create a workgroup of community experts and stakeholders to build alternatives to incarceration that address misdemeanor domestic violence.</b>
<b>Recommendation #6</b>	<b>Learn from the disability justice movement: End the practice of coercive mental health treatment &amp; the criminalization of people with disabilities.</b>
<b>Recommendation #7</b>	<b>Create a Just Transition for current CLS workers to transition into jobs that do not cause harm and serve a social good.</b>
<b>Recommendation #8</b>	<b>Avoid the use of data-driven and algorithm-based decision making tools in the CLS.</b>

## Recommendation #1

### Do not rely on the CLS to address behaviors arising from unmet needs or behavioral health crises.

There is widespread agreement that the CLS is not an appropriate response to economic and public health disparities.<sup>53</sup> Punishing individuals who are trying to meet their basic needs does not address the fundamental problem: poverty. Punishing people for their behavioral health symptoms only guarantees more alienation and trauma for people with disabilities. The City must pursue policy changes that do not penalize people for trying to address their needs or for experiencing a behavioral health crisis. Below are recommendations that can help the City move in this direction.

#### 1a. End the practice of pre-trial detention.

Pretrial detention penalizes the poor for being poor. The vast majority of people incarcerated by the City of Seattle are in jail without having been found guilty of a crime simply because they cannot afford to pay bail. Even short stays in jail can cause major life-altering disruptions to a person's life, including losing a job, leaving children and vulnerable family members without care, and interrupting medically necessary healthcare.

Furthermore, most suicides — the leading cause of death in jail — typically occur within the first nine days of incarceration.<sup>54</sup> A 2021 report by the King County Auditor surfaced numerous serious safety issues at the King County Jail, which included housing suicidal individuals in unsuitable cells.<sup>55</sup>

We further caution that house arrest is incarceration. We call on the City to not replace brick and mortar jails with electronic home monitoring (EHM) and other forms of close

<sup>53</sup> Aysha Pamukcu et al., "Health Justice and the Criminal Legal System: From Reform to Transformation," Bill of Health, September 8, 2021.

<https://blog.petrieflom.law.harvard.edu/2021/09/10/health-justice-criminal-legal-system/>;

Ram Sundaresh, "Exposure to the US Criminal Legal System and Well-Being: A 2018 Cross-Sectional Study," American Journal of Public Health. American Public Health Association, January 2020.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6987921/>.

<sup>54</sup> Leah Wang, "Rise in Jail Deaths Is Especially Troubling as Jail Populations Become More Rural and More Female," Web log, Prison Policy Initiative (blog), June 23, 2021.

[https://www.prisonpolicy.org/blog/2021/06/23/jail\\_mortality/](https://www.prisonpolicy.org/blog/2021/06/23/jail_mortality/).

<sup>55</sup> "Investigation and Report Uncover the Untold Stories of People Who Died in Washington Jails," (Columbia Legal Services, August 15, 2019), [https://columbialegal.org/policy\\_reforms/gone-but-not-forgotten/](https://columbialegal.org/policy_reforms/gone-but-not-forgotten/); Grant Daily, et al. Rep. [Adult Jails Need Risk-Based Approach to Improve Safety, Equity](#). King County, WA: KING COUNTY AUDITOR'S OFFICE, 2021; Gupta, Arpit, et al, Rep. [The Heavy Costs of High Bail: Evidence from Judge Randomization](#), n.d.

surveillance as a form of pretrial detention ([Recommendation #4](#)). Relatedly, algorithmic decision-making, such as risk assessments, should not determine decisions related to pretrial detention ([Recommendation #8](#)).

### **1b. Amend Duress Defense and Expand De Minimis Ordinance.**

People should not be punished for attempting to meet a basic need or for experiencing a behavioral health crisis. People accused of a misdemeanor should be able to tell their story before a judge and jury for their consideration. Amending the *duress affirmative defense* and expanding the *de minimis ordinance* provides an opportunity for individuals to explain the rationale for their behavior – context which might significantly change the nature of one’s guilt and humanize how people are treated within the SMC.

*Duress* is an affirmative defense that allows a defendant in a criminal case to argue before a jury that the conduct for which they are being prosecuted is excusable due to extenuating circumstances. Currently, the City’s criminal code limits when duress can be argued as a defense to cases where a defendant has been compelled by another under threat of immediate death or immediate grievous bodily injury to commit the criminal act.

*De minimis* infractions allow a judge to dismiss charges when the conduct of a defendant falls under certain circumstances.<sup>56</sup> Currently, the court may dismiss a prosecution when it finds the nature of the conduct charged does not rise to the level of harm that the law allegedly broken was seeking to prevent. We ask that Council expand this ordinance so that a defendant is allowed to argue that their conduct is excusable when it is a result of attempting to meet a basic need or a symptom of a behavioral health disorder. Judges should be given discretion to decide not to waste finite public resources on penalizing human desperation and disability.

The CLS is significantly more powerful than the mostly indigent defendants who are ensnared in it. Jails are a warehouse for the visibly poor and disabled. City Council should amend sections 12A.04.170 and 12A.04.180 of the Seattle Municipal Code to add attempting to meet a basic need and experiencing symptoms of a behavioral health disorder as available affirmative defenses or causes for case dismissal at the discretion of a judge. While this will not level the power imbalance or stop the persecution of people for their poverty and health issues, it allows the court to consider key information before it makes a decision that could deprive someone of their liberty and seriously impact their life.

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<sup>56</sup> [Seattle Municipal Code. Ord. 102843 § 12A.02.230. 1973.](#)



We caution against overly restricting this ordinance. Judges and juries will have the final say on whether an act is excusable (duress) or appropriate for dismissal (de minimis). The City should make the amendments and ordinance expansive so that it applies to as many misdemeanor offenses as possible.

### **1c. Stop the use of Stay Out of Areas of Prostitution (SOAP) & Stay Out of Drug Area (SODA) orders.**

During the height of the 2020 George Floyd protests, the Seattle City Council voted unanimously to repeal drug traffic loitering and prostitution loitering from Seattle's criminal code, a recommendation that was made to the City by the Reentry Workgroup in its final report.<sup>57</sup> As Councilmembers pointed out, loitering laws have a long racist history in this country and continue to disproportionately target Black, Indigenous, and People of Color with stops and searches, police harassment, and arrests. Stay Out of Areas of Prostitution (SOAP) and Stay Out of Drug Area (SODA) orders are not laws in the Seattle Municipal Code, but their impact is similar.

SOAP and SODA orders are requested by prosecutors, imposed as conditions of release, probation, or deferred prosecution by judges, and enforced through arrest as set forth in Seattle Police Department policy 15.290 and 15.150. These orders ban people from sections of the city, including the areas where social services and most businesses can be found. These orders can also isolate people from their friends, families, and communities within areas like downtown Seattle, the Central District, and much of Southeast Seattle, which are considered drug areas.<sup>58</sup>

SOAP and SODA orders give the police another pretext to stop and question Black, Indigenous, and People of Color, and poor people whom they suspect to have such orders. According to its own data, the Seattle Police Department subjects these populations to stops and searches at higher rates than white people.<sup>59</sup> However, racial profiling of BIPOC individuals who are not under SOAP and SODA orders is not the only problem. State-imposed isolation on individuals through SOAP and SODA orders, as well as other movement restricting punishments meted out by the City (e.g., trespass admonishments, parks trespass exclusions) is traumatic.<sup>60</sup> The City must stop the practice of banishment and end its use of SOAP and SODA orders.

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<sup>57</sup> Seattle Reentry Workgroup Final Report. 2018. Seattle Office for Civil Rights. October 1, 2018.

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

<sup>58</sup> Seattle Police Department Manual. 15.300- Stay out of Drug Areas (SODA)- Defined Boundaries. (2019).

<sup>59</sup> [2017-Stops-and-Detentions-Final.pdf \(seattle.gov\)](https://www.seattle.gov/2017-Stops-and-Detentions-Final.pdf)

<sup>60</sup> Katherine Beckett, and Steve Herbert, "Penal Boundaries: Banishment and the Expansion of Punishment." Law & Social Inquiry 35, no. 01 (2010): 1–38. <https://doi.org/10.1111/j.1747-4469.2009.01176.x>.



**A Note:** The Task Force was pleased to learn that after our meeting with the current Seattle City Attorney Pete Holmes, he directed his prosecutors to stop requesting SOAP and SODA orders. This is a positive step forward. We request that the City, and all future City Attorneys commit to permanently stopping the practice of requesting SOAP and SODA orders. We also call on the Seattle Police Department and the Seattle Municipal Court to stop enforcing and issuing SOAP and SODA orders that were ordered prior. We also ask that The Seattle Police Department stop enforcing similar orders made by King County Superior Court.

**1d. Create a Restitution Fund at the pre-filing level to eliminate the need to prosecute defendants in attempts to compensate harmed parties.**

People who are harmed by the actions of another deserve to be made whole in a way that does not cause more harm. As it stands, over half the restitution imposed by SMC is not recovered and never reaches the harmed party, which is unsurprising as 90 percent of defendants who are brought before the court are indigent.<sup>61</sup>

Not only does the City's current debt-based restitution system fail to center harmed people, it also fails to address the root causes of harmful survival behaviors. Legal financial obligations (LFOs), including restitution, further impoverish people and trap them in a cycle of poverty.

In a letter to the City Attorney dated May 25, 2021, advocates highlighted the need for a restitution fund aimed at relieving the debt and stressors of individuals who are facing misdemeanor charges.<sup>62</sup>

The letter draws attention to studies identifying how over-indebtedness harms physical and mental health. University of Washington School of Public Health research reveals that the cycle of poverty and incarceration contributes to worse health outcomes. Researchers found that among a group of adults experiencing homelessness in the Seattle area, people with outstanding legal debt spent two more years without stable housing than those without legal debt.<sup>63</sup>

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<sup>61</sup> Seattle Municipal Court Research, Planning, and Evaluation Group, Seattle Municipal Court, Statistics re: 2018 to 2021 YTD Restitution, January 20, 2021.

<sup>62</sup> Subcommittee on Restitution Cities & Counties for Fine and Fee Justice Grant Team, Letter to Pete Holmes, May 25, 2021.

<sup>63</sup> Jessica Mogk, Valerie Shmigol, Marvin Futrell, Bert Stover, Amy Hagopian, "Court-imposed fines as a feature of the homelessness-incarceration nexus: a cross-sectional study of the relationship between legal debt and duration of homelessness in Seattle, Washington, USA," *Journal of Public Health*, Volume 42, Issue 2, June 2020, e107– e119, <https://doi.org/10.1093/pubmed/fdz062>.

*“Racism, specifically, is the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.”*

**Ruth Wilson Gilmore**

*Author of Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*<sup>64</sup>

Ruth Gilmore’s ominous definition of racism as a form of state-sanctioned premature death is particularly relevant when we analyze the links between debt and health outcomes.<sup>65</sup> Studies show that those with debt experience lower life expectancy, high blood pressure, obesity, depression, anxiety and other mental disorders, and child behavior problems.<sup>66</sup>

More concerted action by the CLS players to relieve legal fines and fees would contribute to the overall mental health of the Seattle population.

Moreover, LFOs are imposed at a racially disproportionate rate in Seattle. From 2018 to 2021, Indigenous and Black people were 7.6 and 3.9 times more likely than white people on a per capita average to have restitution imposed by the SMC.<sup>67</sup>

King County has recently created a restitution fund for first time offenses for youth through the Restorative Community Pathways.<sup>68</sup> The City should build upon this model and expand eligibility beyond first time offenses. An individual who is already ensnared in the system is not lesser than someone who is new to it.

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<sup>64</sup> Gilmore. Golden Gulag.

<sup>65</sup> Elina Turunen and Heikki Hiilamo, “Health Effects of Indebtedness: A Systematic Review” *BioMed Central Public Health* 14 (2014): 489, <http://www.biomedcentral.com/1471-2458/14/489>; Chris Fitch, et al, “The Relationship between Personal Debt and Mental Health: A Systematic Review.” *Mental Health Review Journal* 16, no. 4 (2011): 153–66, <https://doi.org/10.1108/13619321111202313>; Elizabeth Sweet, et al, “The High Price of Debt: Household Financial Debt and its Impact on Mental and Physical Health,” *Social Science & Medicine* 91, (August 2013): 94- 100, <https://doi.org/10.1016/j.socscimed.2013.05.009>.

<sup>66</sup> Elizabeth Sweet, et al, “Short-term Lending: Payday Loans as Risk Factors for Anxiety, Inflammation and Poor Health,” *Social Science & Medicine–Population Health* 5, (2018): 114, <https://doi.org/10.1016/j.ssmph.2018.05.009>.

<sup>67</sup> Data from Seattle Municipal Court Research, Planning, and Evaluation Group: Restitution 2018-2021 with Age Population Rates. March 5, 2021.

<sup>68</sup> “Executive Constantine Highlights Anti-Racism and Criminal Legal System Transformation in Upcoming Budget: Invest, Divest, Reimagine,” News- King County Executive- Dow Constantine,(King County, WA September 16, 2020), <https://kingcounty.gov/elected/executive/constantine/news/release/2020/September/16-budget-antiracism.aspx>

The City must make an investment in addressing root causes of harmful behaviors while supporting victims who are harmed in the meantime. Furthermore, restitution should be focused on individuals and not on Seattle’s big businesses that already benefit from Washington’s regressive tax structure. The City should not collect restitution for big businesses.

**1e. Create a civilian emergency response system to address behavioral health crises and medical emergencies.**

**NEXT STEPS:**

- i. Build infrastructure to support civilian emergency call centers independent of law enforcement.**
- ii. Invest in community access to first-responder and de-escalation training.**
- iii. Support and resource community-based peer-to-peer response teams.**

Reform efforts, such as crisis intervention training for police, have been made over the years to attempt to stop the police killings of Black, Indigenous, People of Color, and people with disabilities, but have proven ineffective. Use of force rates between crisis intervention training certified Seattle police officers and uncertified officers are the same.<sup>69</sup> These failed reform efforts demonstrate that training is not the problem — it is racist violence by armed state officials and the policing of poverty and disability. We call on the City to take the following steps toward creating a civilian emergency response system to address behavioral crises and medical emergencies.

- i. Build infrastructure to support civilian emergency call centers independent of law enforcement.**

The City must invest in a civilian emergency response system to address behavioral health crises and medical emergencies that is completely independent from law enforcement. In order to create a robust system, the City needs to invest in infrastructure, such as an emergency call center and/or mobile crisis teams consisting of social workers, medical responders, peer counselors, and community members who are skilled and effective in their interventions.

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<sup>69</sup> [“Crisis Intervention Program Report,”](#) (Seattle, WA: Seattle Police Department, 2018).

**ii. Invest in community access to first-responder and de-escalation training.**

The City should also develop skills within the community by increasing options for acquisition of Emergency Medical Technician (EMT) and de-escalation training among Black, Indigenous, and People of Color communities, with the understanding that peer-to-peer intervention is more effective than that of uniformed personnel, medical or otherwise. One action the City can take to facilitate this skill development is to convene a cohort of community and neighborhood-based first responders independent of the police. The cohort should center around a curriculum that includes dispatch, mental health crisis response, and other medical skills appropriate for emergency response.

**iii. Support and resource existing community-based peer-to-peer response teams.**

Community-based responses should be as well-funded and well-trained as responders like Seattle Fire Department and HealthOne. Resources should be directed to those on the frontlines rather than to high-level management and case loads should be manageable (as defined by those supporting the community) to ensure that communities can take an active role in promoting public health and safety at home and around their neighborhoods.

**1f. Reduce the City's use of jail beds and reallocate funding to preventative measures and housing.**

**NEXT STEPS:**

- i. The City Council, Mayor, City Attorney's Office, and Municipal Court jointly commit to continuing current booking restrictions as policy changes are made to permanently reduce the use of jail.**

In response to the COVID-19 pandemic, King County imposed booking restrictions to lower the risks of disease outbreaks in its jails. These booking restrictions reduced law enforcement's ability to book people into jail for most misdemeanors. The City's incarceration rate fell from an average daily population of 180 in 2020 to 54 in 2021.<sup>70</sup> From March through December 2020, the County waived the contractual bed floor that required the City to pay for 187 beds regardless of whether they were filled. With the decrease in bed use and the bed

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<sup>70</sup> Caedmon Magboo Cahill, et al, "The Plague of Incarceration," The Seattle Times (April 23, 2021), <https://www.seattletimes.com/opinion/the-plague-of-incarceration/>.

floor waiver, the City recovered a \$10.7 million savings, which it applied to the City's 2020 budget shortfall.<sup>71</sup>

In July 2020, with the pandemic continuing and protests calling for divestment from the CLS, King County initiated conversations with the City about how it should spend contractually obligated payments made by the City to the County for unfilled beds after the bed floor waiver was lifted. The City and County jointly announced in May 2021 that \$8 million in 2021 and another \$8 million in 2022 (\$16M total) will be directed to investments within Seattle to promote housing and community-based support services for communities disproportionately targeted by the CLS. In their announcement, the City and County affirmed a commitment to divesting from incarceration and investing in communities.<sup>72</sup>

This is a positive first step in the right direction. The City should continue to divest in incarceration and invest in communities. However, this will not be possible if the City returns to its pre-COVID-19 rate of incarceration.<sup>73</sup>

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<sup>71</sup> \$7.15M through the mid-year budget [CB119825](#) and \$2.998M through the Q3 Supplemental [CB119910](#).

<sup>72</sup> "King County, Seattle Repurpose \$16 Million from Jail Operations to Community-Based Health and Housing," News- King County- Executive Dow Constantine (King County, WA, April 20, 2021), <https://kingcounty.gov/elected/executive/constantine/news/release/2021/April/20-omnibus-jail-funding.aspx>.

<sup>73</sup> Caedmon Magboo Cahill, et al, "The Plague of Incarceration," The Seattle Times (April 23, 2021), <https://www.seattletimes.com/opinion/the-plague-of-incarceration/>.

**Recommendation #2**

**Address the root causes of CLS engagement.**

In order to make our communities safer and reduce the harm of the criminal legal system, we must address institutions that directly cause harms, as well as root causes of unsafe circumstances we experience, including the police, jails and other sites of confinement, poverty, and the criminalization of poverty, homelessness, substance use, and sex trade. Below are recommendations the City should take to further this work.

**2a. Housing for All.**

**NEXT STEPS:**

- i. Stop the criminalization of homelessness.**
  - Remove the Scofflaw Ordinance.
  - End encampment sweeps.
- ii. Expand housing.**
  - Focus on expanding permanent affordable and accessible housing units.
  - Expand a diversity of housing needs for different populations including harm reduction housing using a housing first framework.
- iii. Prevent further homelessness.**
  - Extend the eviction moratorium.
  - Put a moratorium on rent hikes & forgive rent debt.
- iv. Community engagement with direct service, frontline workers and organizations led by currently and formerly houseless communities.**

Approximately 11,000 people experience homelessness in Seattle and King County, according to a 2020 HUD report, ranking this region third in the country in the severity of the housing crisis.<sup>74</sup> Since the COVID-19 pandemic began, Seattle has also seen a stark rise of more than 50 percent in tents.<sup>75</sup> Even before the pandemic, the local economy – including

<sup>74</sup> Sydney Brownstone, “Washington State’s Rise in Homelessness Outpaced the Nation’s, According to Report,” The Seattle Times (April 9, 2021), <https://www.seattletimes.com/seattle-news/homeless/washington-states-rise-in-homelessness-outpaced-the-nations-according-to-report/>.

<sup>75</sup> Scott Greenstone, “Tents in Seattle Increased by More than 50% after COVID Pandemic Began, Survey Says,” The Seattle Times (April 9, 2021), <https://www.seattletimes.com/seattle-news/homeless/tents-in-seattle-increased-by-more-than-50-after-covid-pandemic-began-survey-says/>.

corporate impacts from companies such as Amazon, Microsoft, and more – skyrocketed rent prices, following the national trend of housing stock that was inaccessible for many local workers in wage-stagnant industries. A recent Apartment List report shows Seattle rents have increased 3.1 percent in only the past month, with a hike of 5.2 percent compared to rent prices one year ago. Median rent in Seattle is \$1,687 for a one-bedroom unit and \$2,105 for a two-bedroom unit. This is the seventh straight month in which rent has increased since January 2020.<sup>76</sup>

At the same time, the median income in the city has surpassed \$100,000, with significant wealth and racial disparities. Drawing from statistics in the US Census Bureau, The Seattle Times analyzed that in 2019, Seattle’s median income was about \$112,000. While 52 percent of households make \$100,000 or more, 22 percent of Seattle households have incomes from \$50,000 to \$99,000. A significant 26 percent of Seattle’s households earn less than \$50,000. The median income for households headed by a Black person was \$43,500. The estimated median income for households headed by a Native American/Alaska Native person was \$34,500.<sup>77</sup>

Job losses in the COVID-19 pandemic have also hit poor and Black, Indigenous, and People of Color communities disproportionately nationwide.<sup>78</sup> Black residents in King County make up 6 percent of the population and 11 percent of total recent layoffs as of June 2020. White residents account for 63 percent of the county’s population and experience 48 percent of pandemic-related unemployment.<sup>79</sup> With federal unemployment benefits ending in Sept 2021 and no state-led support infrastructure, the financial distress felt by economically vulnerable communities will be further aggravated.<sup>80</sup>

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<sup>76</sup> “RENT REPORT SEATTLE,” Apartment List (Apartment List, September 2021), <https://www.apartmentlist.com/wa/seattle#rent-report>.

<sup>77</sup> Gene Balk Guy, “Seattle’s Median Household Income Soars Past \$100,000 - but Wealth Doesn’t Reach All,” The Seattle Times (October 4, 2020), <https://www.seattletimes.com/seattle-news/data/seattles-median-income-soars-past-100000-but-wealth-doesnt-reach-all/>.

<sup>78</sup> Paul Roberts, “Coronavirus Pandemic Job Losses Falling Hardest on People Who Were Already Hurting,” The Seattle Times (June 29, 2020), <https://www.seattletimes.com/business/economy/coronavirus-pandemic-job-losses-falling-hardest-on-people-who-were-already-hurting/>.

<sup>79</sup> Washington STEM & Washington Employment Security Department Labor Market and Economic Analysis Division. (2020, June). Labor Market Credential Data Dashboard. <https://washingtonstem.org/labor-market/>.

<sup>80</sup> Paul Roberts, “With Nearly 200,000 in Washington Set to Lose Jobless Benefits, State Has No Plan B,” The Seattle Times (August 13, 2021), <https://www.seattletimes.com/business/economy/nearly-200000-washingtonians-could-lose-all-jobless-benefits-next-month/>.

The confluence of factors such as the COVID-19 pandemic and job losses in the region, existing disparate income levels, and a rising rental market, contribute to the rising numbers of people and families who are houseless – the main population funneled through the Municipal Court system. The discussion around substance use and mental health crises among the houseless population cannot be separated from these material and environmental factors that have shaped Seattle’s communities. Regardless, public health research has shown that lack of housing aggravates existing social crises such as substance use disorders, mental health crises, and poverty. Furthermore, houseless communities also face increased interactions with dangerous law enforcement officers.

We call on the City to invest in Housing for All, by taking the following steps.

**i. Stop the criminalization of homelessness.**

**Remove the Scofflaw Ordinance.** Laws that criminalize homelessness should be permanently removed. A prominent example of this, the Scofflaw Ordinance,<sup>81</sup> which penalizes people who live in vehicular residencies, or recreational vehicles (RVs), should be repealed. Organizations that mitigate the impact of impounds and tows, and offer support and resources to people living in RVs, such as the Scofflaw Mitigation Team<sup>82</sup> should be resourced and supported.<sup>83</sup>

**End encampment sweeps.** Encampments are the unofficial housing policy of the City in the absence of long term, affordable, low barrier housing in a city that is inaccessible to many of its residents. Criminalizing encampments erases the City’s complicity in creating and perpetuating these conditions. The use of widespread encampment removal and raids to

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<sup>81</sup> Don Ward, “The City of Seattle Has Instituted a New ‘Scofflaw’ PARKING Program Which,” Seattle Weekly (Seattle Weekly, November 23, 2010),

<https://www.seattleweekly.com/news/the-city-of-seattle-has-instituted-a-new-scofflaw-parking-program-which/>.

<sup>82</sup> Scott Greenstone, “As RV Camps Accumulate in Seattle Streets, a Program for Homeless Vehicle Campers Fights to Stay Funded” (The Seattle Times, November 10, 2020),

<https://www.seattletimes.com/seattle-news/homeless/as-rv-camps-accumulate-in-seattle-streets-a-program-for-homeless-vehicle-campers-fights-to-stay-funded/>; “Appendix D: Scofflaw Mitigation Tool Kit,” Seattle.gov, accessed July 2021,

<http://www.seattle.gov/Documents/Departments/Council/Issues/ProgressiveRevenueTaskforce/Appendix-D-Scofflaw-Mitigation-Tool-Kit.pdf>.

<sup>83</sup> “Scofflaw FAO - Courts.” Seattle.gov (Seattle Municipal Court), accessed August 12, 2021. Jean Darsie and Bill Kirlin-Hackett, “Make It Safer and Less Onerous for Homeless Living in Vehicles” (The Seattle Times, June 8, 2015), <https://www.seattletimes.com/opinion/make-it-safer-and-less-onerous-for-homeless-living-in-vehicles/>.



address the issue of homelessness is a public health risk, especially during the COVID-19 pandemic, and is ineffective and dangerous in addressing the issue of homelessness.<sup>84</sup>

## ii. Expand housing.

**Focus on expanding permanent affordable and accessible housing units.** Our housing system is drastically lacking. A recent report shows that we need 15,000 affordable and accessible units to immediately address homelessness and 37,000 affordable and accessible units for an immediate and future response in the region.<sup>85</sup> Without achieving this transformative approach to housing, encampments will continue to be the de facto housing policy of the City.

Temporary solutions are insufficient to address the housing crisis in the City. In 2020's City Budget deliberations, the Human Services Department (HSD) presented \$51.1 million in funding emergency solutions in contrast to \$33 million allocated to housing and prevention.<sup>86</sup> While immediately impactful, the use of short-term hotel stays to alleviate housing on the streets is a temporary stopgap measure that ignores the need for long term, low barrier, affordable housing. The City needs to balance approaches between emergency and long-term solutions.

The demand for permanent supportive housing continues to be necessary.

**Expand a diversity of housing needs for different populations including harm reduction housing using a housing first framework.** The City should also take the recommendations of housing advocacy groups such as Lived Experience Coalition, Real Change, and House Our Neighbors to utilize the funding from COVID-19 Relief and the Jumpstart tax to build **a range** of permanent supportive housing options that meet the needs of a diverse population facing housing instability. Housing improves health outcomes across populations<sup>87</sup> and is, in itself, a

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<sup>84</sup> Julianna Alson, Omid Baheri Garakani, and Miranda Vargas, "OPINION: Mayor Durkan, If You Care about Public Health, Stop the Sweeps" (South Seattle Emerald, May 27, 2020), <https://southseattleemerald.com/2020/05/27/opinion-mayor-durkan-if-you-care-about-public-health-stop-the-sweeps/>.

<sup>85</sup> Benjamin Maritz and Dilip Wagle, "Why Does Prosperous King County Have a Homelessness Crisis?" (McKinsey & Company, June 23, 2021), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/why-does-prosperous-king-county-have-a-homelessness-crisis>.

<sup>86</sup> "Citywide Homelessness Response: 2020 Proposed Budget" (City of Seattle), accessed September 2021,

<sup>87</sup> Lauren Taylor, "Housing and Health: An Overview of the Literature: Health Affairs Brief," Health Affairs (Health Affairs, June 7, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/>.

behavioral health intervention. The provision of housing and support are correlated with improved mental health and quality of life.<sup>88</sup>

This range of housing options must expand Housing First sites (low-barrier, harm reduction based housing with no expectation of abstinence). 1811 Eastlake offers a prime example of a long-term solution that increases individual health and community-wide safety.<sup>89</sup>

Abstinence-based programming and housing is unlikely to engage marginalized populations that often suffer more substance-related harms and chronic homelessness. Instead, harm reduction approaches like Housing First, are an efficacious alternative that can lead to a higher quality of life.<sup>90</sup> Sobriety based housing led by peers such as Oxford Homes should also be encouraged and supported financially. A diverse approach to housing is necessary.

Formations such as Familiar Faces that encourage cross-organizational, cross-jurisdictional communication and support for service providers, city and county workers alongside community members with behavioral, physical health and housing needs, should be resourced.

### iii. Prevent further homelessness.

**Extend the eviction moratorium.** The City's eviction moratorium that expires on Sept 30, 2021 should be extended,<sup>91</sup> as the expiration will lead many families and individuals to face housing instability and houselessness. While we are aware that the City plans to allocate federal funding to rental assistance, these interventions are still insufficient to deal with the impending stress and economic hardships that those who are most financially vulnerable experience.<sup>92</sup> Such measures also put the burden on renters to navigate a bureaucratic and

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<sup>88</sup> Geoffrey Nelson, Paula Goering, and Sam Tsemberis, "Housing for People with Lived Experience of Mental Health Issues: Housing First as a Strategy to Improve Quality of Life," *Community Psychology and the Socio-Economics of Mental Distress*, January 2012, pp. 191-205, [https://doi.org/10.1007/978-1-137-00304-1\\_13](https://doi.org/10.1007/978-1-137-00304-1_13).

<sup>89</sup> "1811 Eastlake" (Downtown Emergency Service Center (DESC), April 21, 2021), <https://www.desc.org/what-we-do/housing/1811-eastlake/>.

<sup>90</sup> Taurmini S. Fentress et al., "Dual Study Describing Patient-Driven Harm Reduction Goal-Setting among People Experiencing Homelessness and Alcohol Use Disorder," *Experimental and Clinical Psychopharmacology* 29, no. 3 (2021): pp. 261-271, <https://doi.org/10.1037/pha0000470>.

<sup>91</sup> Kamaria Hightower, "[Mayor Durkan Announces September 30 Extension of Eviction Moratoria and Continuation of Additional Covid-Related Protections](#)" (Office of the Mayor, June 18, 2021).

<sup>92</sup> KING 5 Staff, "Seattle City Council Allocates \$28.7 Million to Rental Assistance in Latest COVID-19 Rescue Plan," *king5.com* (King5, August 10, 2021), <https://www.king5.com/article/news/local/seattle-city-council-million-rental-assistance-second-covid-rescue-plan>; Ashley Archibald, "Communities on the Margins Brace for End of the Eviction Moratorium" (South Seattle Emerald, June 8, 2021), <https://southseattleemerald.com/2021/06/03/communities-on-the-margins-brace-for-end-of-the-eviction-moratorium/>.

lengthy process to seek funding while facing pressures from landlords. Without the protection of an eviction moratorium, the delay in disbursements could lead to evictions and immense stress on the part of the tenants.<sup>93</sup>

**Put a moratorium on rent hikes & forgive rent debt.** The City should introduce ordinances that pressure real estate developers and landlords to forgive and/or adjust rent debt due to renters' income instability and impending rent hikes. As we enter the second year of the pandemic and end of the state-wide eviction moratorium that included a halt to rent increases on June 30, rent prices in Seattle have steadily climbed.<sup>94</sup> Rent hikes in a period of economic instability and pandemic hardships makes housing more unsustainable for Seattle residents. The incongruent hikes in rent alongside the stagnation of wages puts enormous financial stress on residents that threaten their housing status. Drawing from the precedent set by Governor Inslee's prohibition on rent hikes,<sup>95</sup> City Council should implement moratoria on rent hikes to prevent further rent debt. Moves should also be made to forgive rent debt as an attempt to mitigate the impacts of the pandemic on poor and working families.

#### **iv. Community engagement with direct service, frontline workers and organizations led by formerly houseless communities.**

Finally, the City should engage with people experiencing homelessness and frontline direct service workers to discuss better implementation and support for increased and enhanced permanent affordable housing.<sup>96</sup> Direct service workers are often underpaid, understaffed, and overworked, creating strenuous conditions in shelters and affordable housing buildings. Honoring the lives and experiences of people enduring homelessness should go hand-in-hand with valuing the labor and improving the working conditions of those who work

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<sup>93</sup> Mackenzie Hawkins and Noah Buhayar, "Where Is the Money?: Millions Risk Eviction Over Delayed U.S. Aid," Bloomberg.com (Bloomberg, July 21, 2021), <https://www.bloomberg.com/news/articles/2021-07-22/-where-is-the-money-millions-risk-eviction-on-tardy-u-s-aid>; Author: Kalie Greenberg, "King County Lags on Rental Assistance Distribution Just Weeks Before EVICTION Ban Expires," king5.com (King5, September 2, 2021), <https://www.king5.com/article/news/local/king-county-lags-on-rental-assistance-distribution-just-weeks-before-eviction-ban-expires/>.

<sup>94</sup> Heidi Groover, "Rent Is Going up. Here's What You Need to Know" (The Seattle Times, August 12, 2021), <https://www.seattletimes.com/business/real-estate/in-seattle-pandemic-recovery-brings-another-reality-the-rent-is-going-up/>.

<sup>95</sup> "PROCLAMATION BY THE GOVERNOR EXTENDING AND AMENDING 20-05 AND 20-19, Et Seq." (State of Washington, Office of the Governor, March 18, 2021).

<sup>96</sup> David Kroman, "Case Workers: 'a Paycheck Away from Being Homeless Themselves'" (Crosscut, June 4, 2018), <https://crosscut.com/2018/05/case-workers-paycheck-away-being-homeless-themselves>.

with them. The experiences of directly impacted people and frontline workers should be centered and valued to inform housing policies.

## **2b. Establish Safe Consumption Sites/Services & Harm Reduction approaches to drug use.**

### **NEXT STEPS:**

- i. Elevate person-centered approaches.**
- ii. Expand safe consumption sites & services.**
- iii. Consult with community groups that advocate for drug user health and harm reduction practices.**
- iv. Address the rise in methamphetamine overdose-related deaths.**
- v. Explore opportunities to elevate safe supply interventions.**

Outcomes that are defined and named by systems and institutional players shape the current approaches to drug use. The main outcomes sought through interventions are abstinence and reduced use. While these outcomes play a part, limiting interventions to these specific goals downplays total health and wellbeing. They are also not inclusive of person-centered approaches. We call on the City to take the following steps to establish safe consumption sites/services and employ harm reduction approaches to drug use.

### **i. Elevate person-centered approaches.**

Person-centered approaches should be included in all drug use responses. Leading this transformative approach, British Columbia practitioners and researchers recently published a study where a prescribed stimulant medication was provided as a treatment modality for people using illicit methamphetamine or cocaine.<sup>97</sup> In the study, the research proposal initially sought participant feedback and used that information to determine outcomes. This method is contrary to the pattern where outcomes are defined by system players rather than impacted individuals. The City can support this person-centered approach to shape its interventions.

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<sup>97</sup> Heather Palis et al., "Exploring the Effectiveness of Dextroamphetamine for the Treatment of Stimulant Use Disorder: A Qualitative Study with Injectable Opioid Agonist Treatment Patients," In Review 1 (April 12, 2021), <https://doi.org/10.21203/rs.3.rs-404459/v1>.

## ii. Expand safe consumption sites and services.

Safe consumption spaces and services are an evidence-based approach to drug use proven to decrease overdose fatalities, reduce costs on emergency services, address disease transmissions such as human immunodeficiency virus (HIV), and resolve public drug consumption and drug use-related litter.<sup>98</sup> Safe consumption spaces/services are also one approach to address the disproportionality of fatal overdoses in people experiencing homelessness. In 2019, 14 percent of overdose deaths were from housing unstable people, while people experiencing homelessness only made up less than 0.5 percent of Seattle's total population.<sup>99</sup>

Overdoses related to opioid and methamphetamine use is on the rise, with 301 overdose deaths in King County within just the first six months of 2021. Recognizing this, the City should proceed with its commitment to establish Safe Consumption Sites that allow for supervised use of these substances. The intervention of a safe consumption space was a strong recommendation from the City and County-convened Heroin and Prescription Opiate Addiction Task Force.<sup>100</sup> It is also a public health practice implemented in other countries, such as Canada and Australia, and is built upon harm reduction principles.<sup>101</sup> In 2017, the City committed to establishing such sites, but funding was stonewalled and not spent as directed. In 2020, based on advocacy from the local Yes to SCS coalition, City Council revamped funding to safe site consumption services at existing social service locations, which is a cost-effective effort and addresses previous preventions for spending the funding. While this is a critical step, the City should continue investing funds to implement and expand safe consumption spaces and services.

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<sup>98</sup> Jennifer Ng, Christy Sutherland, and Michael Kolber, "Does Evidence Support Supervised Injection Sites?," Canadian family physician *Medecin de famille canadien* (U.S. National Library of Medicine, November 2017), <https://pubmed.ncbi.nlm.nih.gov/29138158/>. Evan Wood et al., "Changes in Public Order after the Opening of a Medically Supervised Safer Injecting Facility for Illicit Injection Drug Users," *Canadian Medical Association Journal* 171, no. 7 (2004): pp. 731-734, <https://doi.org/10.1503/cmaj.1040774>.

<sup>99</sup> "Overdose Deaths," King County, accessed August 16, 2021, <https://kingcounty.gov/depts/health/examiner/services/reports-data/overdose.aspx>.

<sup>100</sup> Vernal Coleman, "Open 'Safe Places' in Seattle, King County for Heroin Use, Task Force Says" (The Seattle Times, September 15, 2016), <https://www.seattletimes.com/seattle-news/crime/open-public-sites-in-seattle-king-county-for-heroin-use-task-force-says/>.

<sup>101</sup> "Supervised Consumption Sites" (Vancouver Coastal Health), accessed 2021, <http://www.vch.ca/public-health/harm-reduction/supervised-consumption-sites>; Brandon DL Marshall et al., "Reduction in Overdose Mortality after the Opening of North America's First Medically Supervised Safer Injecting Facility: A Retrospective Population-Based Study," *The Lancet* 377, no. 9775 (2011): pp. 1429-1437, [https://doi.org/10.1016/s0140-6736\(10\)62353-7](https://doi.org/10.1016/s0140-6736(10)62353-7); Ingrid van Beek et al., "The Sydney Medically Supervised Injecting Centre: Reducing Harm Associated with Heroin Overdose," *Critical Public Health* 14, no. 4 (2004): pp. 391-406, <https://doi.org/10.1080/09581590400027528>.

**iii. Consult with community groups that advocate for drug user health and harm reduction practices.**

Building successful sites and services can be accomplished via authentic and consistent engagement with community formations led by current/former users, and organizations such as Hepatitis Education Project (HEP), Green Light Project (GLP), Peoples' Harm Reduction Alliance (PHRA), Yes to Drug User Health, the coalitions Just Access to Health and VOCAL-Washington. Engagement with such formations would educate the City on the changing landscape of needs around drug user health, including the necessity for increased knowledge and support for methamphetamine users.

**iv. Address the rise in methamphetamine overdose-related deaths.**

The death toll of drug users who die of methamphetamine overdose has risen in the Seattle and King County area over the years. In 2019, the majority of all local overdose deaths involved methamphetamine, dominating the spectrum of drugs involved in overdose fatalities. A recent report by the Yes to Drug User Health project reveals the need for harm reduction approaches to prevent overdose for people who use methamphetamine.<sup>102</sup> Substance use researchers such as Dr. Judith Tsui have proposed research using stimulant substitution therapy to support people who have co-occurring addictions of methamphetamines and opioids.<sup>103</sup> Meaningful investments in efforts that humanize people who use drugs and emphasize the health and autonomy of users is an authentic harm reduction approach.

The City should explore innovative medication therapies, which are a current effort across Canada, and especially in British Columbia, that served as both overdose and COVID-19 response. This type of innovative medication therapy uses regulated, prescribed medications that mimic effects of illicit drugs to make use safer. Proposing the use of diacetylmorphine, which is prescription-grade heroin, has recently been legislated in New Mexico.<sup>104</sup> While diacetylmorphine can present challenges with prescribing, a similar prescription called

<sup>102</sup> Jesse Rawlins, "[Addressing Methamphetamine Final Report and Recommendations Seattle-King-County](#)" (Yes to Drug User Health, June 2020).

<sup>103</sup> Sydney Brownstone and Scott Greenstone, "A Medication for Meth Use? Seattle Health Care Workers Want to See If It Works" (The Seattle Times, July 16, 2020), <https://www.seattletimes.com/seattle-news/homeless/a-medication-for-meth-use-seattle-health-care-workers-want-to-see-if-it-works/>.

<sup>104</sup> "New Mexico Passes Legislation to Examine Administering Pharmaceutical-Grade Heroin or Other Opioids by Medical Practitioners to People Struggling with Long-Term Addiction," Drug Policy Alliance, February 14, 2018, <https://drugpolicy.org/press-release/2018/02/new-mexico-passes-legislation-examine-administering-pharmaceutical-grade>.

hydromorphone has also been clinically proven to address heroin usage.<sup>105</sup> For stimulant responses, practice and research in the Netherlands have successfully shown that using dextroamphetamine, a prescribed stimulant, is effective at resolving illicit stimulant use.<sup>106</sup> Innovative medication therapies can also be achieved through person-centered approaches and identify how people often use drugs for legitimate reasons. While these types of innovative medication therapies are not widely practiced nor researched across the country, the City can provide funding towards pilot programs that utilize this type of intervention.

## 2c. Increase access to healthcare

### NEXT STEPS:

- i. **Allocate COVID-19 Relief Funding for the expansion of timely and free access to culturally relevant mental health services.**
- ii. **Expand access to voluntary inpatient rehabilitation services.**
- iii. **Direct COVID-19 relief funds toward cash stipends for people facing financial hardships.**

The pandemic has led to a backlog in area hospitals that are overburdened from the current rise in COVID-19 cases.<sup>107</sup> Non-COVID-19 related health procedures are being delayed to make room for COVID-19 patients. While the media focuses on hospital bed and basic medical care shortages, the mental health needs of poor and houseless communities remain largely absent from the conversation.

The lack of mental health resources for Black, Indigenous, and People of Color, people with disabilities, poor people, and houseless communities has been normalized, with intervention occurring only when situations reach crisis levels. This devalues preventive healthcare and the people who provide mental healthcare, as evidenced by the low pay and overwhelming client load for community mental health providers, leading to the overvaluing of institutional

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<sup>105</sup> While diacetylmorphine can be less accessible, hydromorphone has been proven just as effective as diacetylmorphine.

<sup>106</sup> Mascha Nuijten et al., "Sustained-Release Dexamfetamine in the Treatment of Chronic Cocaine-Dependent Patients on Heroin-Assisted Treatment: A Randomised, Double-Blind, Placebo-Controlled Trial," *The Lancet* 387, no. 10034 (2016): pp. 2226-2234, [https://doi.org/10.1016/s0140-6736\(16\)00205-1](https://doi.org/10.1016/s0140-6736(16)00205-1).

<sup>107</sup> Mike Reicher, "Washington Hospitals Filling as Pandemic Labor Shortage Strains Health Care System" (*The Seattle Times*, August 18, 2021), <https://www.seattletimes.com/seattle-news/health/washington-hospitals-filling-as-pandemic-labor-shortage-strains-healthcare-system/>.



crisis responders like firefighters, EMTs, and police officers. The lack of appropriate non-crisis, preventive mental health care services leads to an overdependence on costly and potentially dangerous crisis responders.

A different paradigm is necessary; this shift should decenter crisis response as the primary mechanism to meet the mental health needs of our communities and include a commitment by the City to support routine and preventive mental healthcare and adequately fund facilities that offer them. The pandemic further aggravates the pre-existing barriers that undocumented people, LGBTQ+ people, poor people, and others face, especially for those with intersecting identities. Long wait times for existing free or affordable healthcare and mental health services make them essentially inaccessible.<sup>108</sup> Below we have outlined next steps that must be taken to increase access to healthcare.

**i. Allocate COVID-19 Relief Funding for the expansion of timely and free access to culturally relevant mental health services.**

The City should utilize its COVID-19 Relief Funds to support healthcare access, including culturally relevant mental health, especially for predominantly Black, Indigenous, People of Color, immigrant, and poor communities. Establishing more linguistically diverse, culturally relevant primary care facilities and practitioners citywide that are explicitly aimed at reaching these communities is a way to address the root causes of poverty in our city.

**ii. Expand access to voluntary inpatient rehabilitation services.**

In addition, inpatient rehabilitation services that can support communities seeking detoxification and treatment should be made widely available. Currently, access to most of these services is prohibitive and requires insurance coverage and medical referrals, all of which are not easily accessible to poor communities who are uninsured or with limited access to services.

**iii. Direct COVID-19 relief funds toward cash stipends for people facing financial hardships.**

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<sup>108</sup> Hannelore Sudermann, "Mental-Health Needs Have Washington in a State of Crisis," UW Magazine (University of Washington Magazine, September 2021), <https://magazine.washington.edu/feature/mental-health-needs-have-washington-in-a-state-of-crisis/>; "King County Community Health Needs Assessment: LGBTQ Community Spotlight," KingCounty.gov (King County Hospitals for a Healthier Community), accessed 2021.



A major driver of poor mental health is poverty and low wages.<sup>109</sup> Public health researchers have applied data concluding that poverty and financial stress take their toll on an individual's physical and mental health and are highly correlated. In addressing the root causes that drive people into the CLS system, the City needs to address the wealth gap in the city. A COVID-19 relief package that includes an income and cash relief, especially for those experiencing financial hardship and impacted by the loss of federal unemployment and other forms of income, could mitigate these health impacts.

Other jurisdictions are pursuing bold initiatives to address ways in which poverty drives homelessness. The New Leaf Project based in Vancouver, BC conducted an experiment where they offered people who are houseless \$5000 cash transfers and observed a correlation with their ability to transition out of homelessness.<sup>110</sup> The City should embrace creative initiatives like these that offer a glimpse into the potentials of social policies that emerge from a different foundational paradigm.

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<sup>109</sup> Bill Gardner, "How to Improve Mental Health in America: Raise the Minimum Wage," The New Republic, May 4, 2016, <https://newrepublic.com/article/133302/improve-mental-health-america-raise-minimum-wage>.

<sup>110</sup> Natalie Marchant, "50 Homeless People in Canada Were given over \$5,000 Each. Here's What Happened Next," World Economic Forum, October 26, 2020, <https://www.weforum.org/agenda/2020/10/cash-payments-homeless-canada/>.

**Recommendation #3**

**Evaluate diversion programs for their ability to cause harm. Prioritize non-CLS responses over the expansion of diversion programs.**

**NEXT STEPS:**

- i. Adopt principles outlined below before investing in additional diversion programs.**

The Task Force is adamant that diversion should not be used as an alternative to incarceration in a way that inadvertently expands the CLS's reach and budget. Rather, diversion should be deployed as a temporary tool in a broader strategy to end the criminalization of poverty. To that end, the use and expansion of diversion programs should be paired with the decriminalization of misdemeanor offenses which predominantly stem from root causes of poverty, housing instability, and lack of access to healthcare services.

**The Task Force endorses the following principles related to diversion:**

- Criminal offenses which are the result of poverty are not appropriate for diversion, but rather must be declined or decriminalized.
- Recognize that most misdemeanor offenses are the result of poverty and lack of services and support. Access to services and support should not be triggered by police and court interaction, but should be accessible to everyone at any time.
- Diversion may be appropriate when it happens at pre-filing or earlier in the CLS process.
- Diversion is problematic when it relies on discretion from law enforcement.
- Diversion programs should be rooted in community, and it should be community members that offer services and connect individuals into appropriate support systems instead of law enforcement (police, prosecutors, courts, etc.).
- Services provided via diversion should be voluntary and not compliance-based.
- Diversion programs must be funded by existing CLS budgets.

**Recommendation #4**

**Electronic Home Monitoring (EHM) should not be used as an alternative to incarceration.**

Electronic Home Monitoring (EHM) is currently used in SMC in lieu of pretrial incarceration and as an alternative to jail for individuals serving mandatory minimum sentences required by certain driving under the influence (DUI) convictions.<sup>111</sup> In SMC, unless the defendant is eligible and qualifies for one of the few subsidized slots, a defendant pays for their own electronic home monitoring device.<sup>112</sup> In 2017, the average cost for an EHM device was approximately \$12 per day.

Although EHM is generally thought of as an alternative to incarceration, electronic surveillance devices such as EHM have increasingly become an alternate form of incarceration, or “digital imprisonment”.<sup>113</sup> These devices greatly restrict movement, limit mobility, track and monitor behaviors, and trigger additional punishment, sometimes on faulty information, all without evidence that they increase community safety when used for misdemeanor offenses.<sup>114</sup> The barriers created by EHM include challenges to keeping and finding employment, securing housing, supporting family activities, and participating in community activities.

While most individuals would prefer EHM over incarceration within King County Jail, this is a false choice. Rather than offering EHM as a benefit over jail, policymakers, judges, and prosecutors should carefully evaluate evidence supporting the conclusion that jail or EHM keeps communities safer and is worth the harm exacted by either form of punishment.

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<sup>111</sup> “RCW 46.61.5055: Alcohol and Drug Violators-Penalty Schedule. (Effective until January 1, 2022.)” Washington State Legislature, accessed July 16, 2021, <https://app.leg.wa.gov/rcw/default.aspx?cite=46.61.5055>.

<sup>112</sup> [2018 Seattle City Council Green Sheet](#).

<sup>113</sup> Hayes, Myaisha. “#NoMoreShackles: Why Electronic Monitoring Devices Are Another Form of Prison.” Colorlines, January 10, 2019. <https://www.colorlines.com/articles/nomoreshackles-why-electronic-monitoring-devices-are-another-form-prison-op-ed>.

<sup>114</sup> James Kilgore and Emmett Sanders, “Ankle Monitors Aren’t Humane. They’re Another Kind of Jail,” Wired, August 4, 2018, <https://www.wired.com/story/opinion-ankle-monitors-are-another-kind-of-jail/>.

**Recommendation #5**

**Create a workgroup of community experts and stakeholders to build alternatives to incarceration that address misdemeanor domestic violence.**

The criminal legal system typically addresses Domestic Violence (DV) through arrests, incarceration, mandatory programs such as the Domestic Violence Intervention Project (DVIP), and diversion programs.<sup>115</sup> The court is currently in the process of implementing the use of the Ontario Domestic Assault Risk Assessment (ODARA) tool in risk assessments for DV offenders.

The handling of DV through the CLS has several problems. In misdemeanor DV cases, the framework is often heteronormative and does not consider the dynamics of queer and trans communities.<sup>116</sup> The punitive response also dissuades communities impacted by state violence from seeking resources due to the fear of repercussions and unintended consequences of engaging with the legal system. Mandatory treatment for DV further dilutes the effectiveness of restorative and therapeutic solutions to DV. By the time the police enter the situation, it is after several incidents and years of accumulated tensions and violence.

Through the City Attorney's Office (CAO), pre-filing diversion is now available for youth ages 18 to 24 years old involved in family DV offenses through a recent collaboration with Gay City. Pre-filing diversion for DV cases through the CAO should be expanded to include people 25 years old and over, according to the principles of diversion highlighted in Area 4. However, a CLS response is still inadequate to address the complex nature of DV.

A workgroup of community experts and survivors would focus on non-CLS responses to DV and support building up community infrastructure for non-CLS responses that have the capacity, agility, and flexibility to respond to a host of scenarios that would otherwise constitute misdemeanor DV.

For example, there should be supportive community structures outside of the CLS available to survivors and those who cause harm long before crisis situations arise. This centers the well-being, self-determination, and safety of survivors and holds the humanity of those who perpetrate DV, understanding that many times perpetrators themselves can also be survivors

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<sup>115</sup> Seattle Municipal Court. Domestic Violence Intervention Project.

<http://www.seattle.gov/courts/programs-and-services/specialized-courts/domestic-violence-intervention-project>.

<sup>116</sup> The Racial Equity Toolkit conducted in 2019 by the CAO in partnership with An Essential Bridge regarding Pre-Filing Diversion Program for Young Adult Intimate Partner Violence included the perspectives and voices of LGBTQ youth. However, this is an exception rather than a rule in most domestic violence prosecution in Seattle and WA.

of violence. We value healing for all parties involved, which includes access to basic needs, resources, and care.

We support the use of community-based responses, a network of safe houses for survivors, and well-resourced community-based accountability systems for perpetrators that do not further criminalize them.

Accountability and safety need not rest in the arms of the state through the court, police, and other facets of the CLS. These values are echoed by community providers in a letter to the City in July of 2020:<sup>117</sup>

- **“On accountability:** People who perpetrate gender-based violence should be held accountable - but arrest and incarceration does not equate to meaningful accountability that truly repairs harm. We can invest in communities and community-based organizations that support transformative and restorative justice and repair when people are harmed by interpersonal gender-based violence.
- **On survivor safety:** We reject the use of survivors of gender-based violence as a justification for a city budget that pours resources into policing and punishment. Policing, criminal penalties, and incarceration have not been a solution to gender-based violence - and the racism inherent in the system of policing makes BIPOC [Black, Indigenous and People of Color] survivors uniquely unsafe when police do intervene.”

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<sup>117</sup> [“Defunding Seattle Police And Redirecting Our Resources Will Serve, Not Harm, Survivors of Gender-Based Violence,”](#) Google Docs (Advocates For Survivors of Intimate Partner and Sexual Violence, July 31, 2020).

**Recommendation #6**

**Learn from the disability justice movement: End the practice of coercive mental health treatment & the criminalization of people with disabilities.**

**NEXT STEPS:**

- i. Develop an understanding of disability justice.**
- ii. Fund community-based outpatient and inpatient behavioral health centers and non-lock door facilities with good working and living conditions for staff and patients.**
- iii. End the practice of coercive mental health treatment & the criminalization of people with disabilities.**

People with disabilities have consistently fought against the ways in which the medical system, in conjunction with the CLS, have erased their bodily autonomy and subjected them to medical, physical, sexual, and other forms of violence. In the CLS, this includes the use of medical treatment as a prerequisite for release or criteria to mitigate a sentence. We call on the City to learn from the disability justice movement and take the following steps toward ending the practice of coercive mental health treatment & the criminalization of people with disabilities.

**i. Develop an understanding of disability justice.**

Disability justice is rooted in a belief in the organizing power, autonomy, and dignity of people with disabilities and their intersecting identities including race, gender, and sexuality. Disability justice breaks down how access of certain bodies to wealth and power in society are shaped by institutional and social forces and not a judgment of the relative worth and value of differently abled people and bodies.<sup>118</sup> The demand for universal access, including

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<sup>118</sup> Sins Invalid, "What Is Disability Justice?," (Sins Invalid, June 16, 2020), <https://www.sinsinvalid.org/news-1/2020/6/16/what-is-disability-justice>.

accommodation in public spaces, and cultures for people of different needs and abilities is fundamental to the political struggle for disability justice.<sup>119</sup>

*A disability justice framework understands that:*

*All bodies are unique and essential.*

*All bodies have strengths and needs that must be met.*

*We are powerful, not despite the complexities of our bodies, but because of them.*

*All bodies are confined by ability, race, gender, sexuality, class, nation, religion and more, and we cannot separate them.*

### **What is Disability Justice?**

**Sins Invalid<sup>120</sup>**

#### **ii. Fund community-based outpatient and inpatient behavioral health centers and facilities with good working and living conditions for staff and patients.**

A false narrative pervades public discourse about disability and the CLS. This narrative claims that people with disabilities were taken care of in locked door facilities, until these facilities were shut down. Homelessness and crime then skyrocketed in cities across the country.

The reality is that people with disabilities were once warehoused in facilities where they were seriously abused and neglected behind locked institutional doors.<sup>121</sup> The deinstitutionalization movement of the mid-20th century led by people advocating for community integration over isolation of people with disabilities led to the closure of many of these facilities. The federal government promised to invest in community-based infrastructure to meet the housing and residential needs of the newly freed population.

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<sup>119</sup> In addition, the City has an accessibility problem, where access needs are overlooked and often forgotten. Most recently, the City funded two hotel-based housing programs for people who are houseless. However, both hotels are not ADA-compliant and are inaccessible to people with disabilities.

<sup>120</sup> Sins Invalid, "What Is Disability Justice?" (Sins Invalid, June 16, 2020), <https://www.sinsinvalid.org/news-1/2020/6/16/what-is-disability-justice>.

<sup>121</sup> Benjamin Weiser, "Beatings, Burns and Betrayal: The Willowbrook Scandal's Legacy," The New York Times (The New York Times, February 21, 2020). <https://www.nytimes.com/2020/02/21/nyregion/willowbrook-state-school-staten-island.html>.

However, those investments never came in full.<sup>122</sup> Additional policies in subsequent decades further eroded the public safety net, including the gutting of public housing.<sup>123</sup> In the absence of community-based investments to meet people's needs and provide the appropriate support, involuntary detention in hospitals, jails, and prisons have become the warehouses for people with disabilities.<sup>124</sup>

Rather than warehousing and managing people with disabilities, we need to invest in the safety, autonomy, and well-being of people with disabilities. A return to the institutionalization of people with disabilities, whether in psychiatric facilities, or jails, is not a solution. Further, we must address the material conditions that create and aggravate mental health distress and cause people to seek a variety of coping mechanisms to survive.

We call for the funding of well-resourced community-based outpatient and inpatient behavioral health centers and non-lock door facilities. Too often, careworkers in community facilities are often underpaid and overworked, leading to burn out. Meaningful investment into community-based facilities with good working conditions where workers can meaningfully center the autonomy of people with disabilities is crucial.

Services are only one piece of the safety net. Our recommendations in [Recommendation # 1](#) related to housing are inextricably intertwined with the safety and well being of people with disabilities and our communities. Housing is a protective factor for mental health well-being

We reject the use of the CLS as an attempt to manage the lives of people with disabilities. This framework is ableist and once again individualizes the problem of poverty and homelessness as a byproduct of a person's mental state, rather than a consequence of social, economic, and environmental conditions leading to a crisis of care.

**iii. End the practice of coercive mental health treatment & the criminalization of people with disabilities.**

We emphasize the two positions taken by stakeholders in the Trueblood Taskforce convened by Washington State in 2018:

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<sup>122</sup> Vic DiGravio, "The Last Bill JFK Signed - And The Mental Health Work Still Undone," WBUR.org (WBUR, October 23, 2013), <https://www.wbur.org/news/2013/10/23/community-mental-health-kennedy>.

<sup>123</sup> Beth A Rubin, James D Wright, and Joel A Devine, "Unhousing the Urban Poor: The Reagan Legacy," *The Journal of Sociology & Social Welfare* 19, no. 1 (1992), <https://doi.org/https://scholarworks.wmich.edu/jssw/vol19/iss1/8/>.

<sup>124</sup> Liat Ben-Moshe, [Decarcerating Disability: Deinstitutionalization and Prison Abolition](#) (Minneapolis, MN etc.: University of Minnesota Press, 2020).



- “Many of the problems with untimely competency evaluations can be prevented if fewer people with mental illness enter the criminal justice system.
- When people are able to get the treatment they need when they need it, they are more likely to avoid becoming entwined in the criminal justice system.”<sup>125</sup>

We call on the City to adopt a care-based framework informed by the principles of the disability justice movement, so people with disabilities do not have to engage with the CLS to access care, supportive treatment, and housing.<sup>126</sup>

In the Seattle Municipal Court, mental health treatment is sometimes used as a criteria for deferred prosecution. This means that individuals have to undergo mental health treatment as a prerequisite for having their charges dropped. The failure to undergo mental health treatment can result in prosecution for misdemeanor offenses.

This practice of coercing people into receiving treatment has several problems. First, by associating treatment with coercion, furthers the stigma around mental health treatment. Second, the association of treatment with coercion causes further trauma and distress for people with disabilities, making people less likely to seek treatment on a voluntary basis in the long run.

Access to community mental health services should not be premised on compliance with the court’s orders. Furthermore, access to these services as alternatives to the CLS should not be restricted based on classification of misdemeanor charges. Neither should individuals be disqualified due to their criminal histories. As we explore further in [Recommendation #8](#), criminal histories reveal more information about the racism of the CLS and its disproportionate targeting of Black, Indigenous, People of Color, people with disabilities, poor people and other historically marginalized people, than they do of the individuals involved.

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<sup>125</sup> Sherry Lerch and Jacob Mihalak, “[Stakeholder Input to the Trueblood Task Force: Key Issues and Themes](#),” Disability Rights Washington (Technical Assistance Collaborative, May 25, 2018).

<sup>126</sup> Sins Invalid, “10 Principles of Disability Justice,” (Sins Invalid, April 7, 2021), <https://www.sinsinvalid.org/blog/10-principles-of-disability-justice>.

**Recommendation #7**

**Create a Just Transition for current CLS workers to transition into jobs that do not cause harm and serve a social good.**

The City currently employs a large number of staff in the CLS. Much attention focuses on the staffing of the police department, but we want to also bring attention to the staffing of departments such as the City Attorney’s Office (CAO) and the Seattle Municipal Court (SMC). If the City adopts our recommendations, the CLS would shrink considerably, reducing the need for many workers within the CLS. We call on the City to adopt a Just Transition framework popularized by the environmental justice movement.<sup>127</sup> The Just Transition framework trains workers who make their livelihood out of the harmful fossil fuel industry and retrain them to enter into other areas of employment that are consistent with climate justice values and principles.

The shift of City resources from death-making to life-affirming investments<sup>128</sup> requires that we shrink the footprint of the harmful CLS. We call on the City to relocate workers who work in the CLS into other jobs that are life-affirming and life-giving. If needed, the City should give these workers additional resources for retraining.

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<sup>127</sup> “Just Transition,” Climate Justice Alliance, February 19, 2021, <https://climatejusticealliance.org/just-transition/>.

<sup>128</sup> Chris Hayes and Mariame Kaba, “Thinking about How to Abolish Prisons With Mariame Kaba: Podcast & Transcript,” NBCNews.com (NBCUniversal News Group, April 30, 2019), <https://www.nbcnews.com/think/opinion/thinking-about-how-abolish-prisons-mariame-kaba-podcast-transcript-n-cna992721>.

## Recommendation #8

### Avoid the use of data-driven and algorithm-based decision making tools in the CLS.

*“Any system that relies on criminal justice data must contend with the vestiges of slavery, de jure and de facto segregation, racial discrimination, biased policing, and explicit and implicit bias, which are part and parcel of the criminal justice system. Otherwise, these automated tools will simply exacerbate, reproduce, and calcify the biases they are meant to correct.”*

**ACLU**, “With AI and Criminal Justice, the Devil is in the Details”<sup>129</sup>

In the last statewide legislative cycle the ACLU, alongside other organizations, proposed restrictions around the use of algorithms to determine CLS outcomes on the basis that algorithms used in software, predictive analytics, and other technologies systemize and invisibilize racial bias.<sup>130</sup> This is most prominent in the use of risk assessments in the CLS.

Risk assessments use an algorithm to analyze historical data in order to predict the chances that someone will be a “threat to the public” or a “flight risk.” Factors often used in risk assessments include: “the nature of the charge(s) pending at time of arrest, history of criminal arrests and convictions, active community supervision at time of arrest (e.g., pretrial, probation, and parole), history of failure to appear, history of violence, residence stability, employment stability, community ties, and substance abuse.”<sup>131</sup> Whether an individual is assessed as “low risk,” “medium risk,” or “high risk” informs decisions on how they will proceed through the CLS.

Most commonly, risk assessments are a pre-filing intervention aimed at assessing who will be: 1) released on their own recognizance without bail (Personal Recognizance or PR release); 2) released only with bail; or 3) detained in jail prior to trial. Currently, the Seattle Municipal Court (SMC) plans to utilize risk assessment measures in DV, DUI, and mental

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<sup>129</sup> Vincent Southerland, “With AI and Criminal Justice, the Devil Is in the Data,” American Civil Liberties Union (American Civil Liberties Union, March 6, 2019),

<https://www.aclu.org/issues/privacy-technology/surveillance-technologies/ai-and-criminal-justice-devil-data>.

<sup>130</sup> ACLU of Washington, “2020 Legislative Agenda,” ACLU of Washington, January 7, 2020,

<https://www.aclu-wa.org/story/2020-legislative-agenda>.

<sup>131</sup> Charles Sumners and Tim Willis, “Pretrial Risk Assessment Research Summary,” Bureau of Justice Assistance (U.S. Department of Justice, October 18, 2010).

health courts. To date, there has not been any racial equity analyses conducted on these measures.<sup>132</sup>

*“I’ve experienced risk assessments on more than one occasion. Picture this, you’re in a tank—they call it a bullpen, and people are in there for so many reasons. There is a buzz of conversation; people are talking to their lawyers, people are nervous. They call your name, and you go to the gate of the tank with everyone right behind you. They greet you like they’re real nice, like they are there to help you. They ask a lot of personal questions. You are in a very vulnerable state because you are in confinement. This person has the power to determine what happens to you. They misrepresent themselves and misrepresent your words to the judge. They trick you into believing that your truth is represented to the judge in a way that is helpful. In reality, they give the judge the most negative view of your words that they can.*

*I’ve never seen a good assessment. They get you when you are vulnerable and stab you in the back. I don’t know where these people come from. Their specialty is these risk assessments, but I’ve never seen a positive one. The only thing I’ve ever seen is that it gives the judge the wrong impression and the power to decide how much time to sentence you for, instead of treatment. It will say this person should be kept away from the community. They smile in your face like they are going to help you, like they care what your needs are, and they turn it against you. It’s always off the mark and doesn’t benefit the community. It is just a way to put people into a box for a long time.”*

**Andres Pacificar, Task Force Member**, on his experience with risk assessments during pretrial confinement in county jail

Risk assessments have been touted as objective, evidence-based tools that mitigate the economic disparities of money bail, with the purpose of reducing the overall pretrial detention population.<sup>133</sup> However, risk assessments are neither objective nor neutral as the data fed

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<sup>132</sup> While Washington State Court Rule ARLJ 11.2 (b) (2) requires a “standardized classification system” to determine risk for those referred to a probation department, courts are not required to create probation departments. Indeed, it is our understanding that there are Washington courts that utilize a judge-supervised probation model, thus not requiring the use of such a classification tool. Under ARLJ 11.2, courts have the option to establish a probation department.

<sup>133</sup> [“Pretrial Risk Assessment,”](#) United States Courts, accessed Jun 20, 2021,.

into them is inherently racist and biased against Black, Indigenous, and People of Color. The criteria used to measure the risk of further criminal justice involvement of individuals in the CLS inherit existing racial disparities in policing and sentencing by focusing on past convictions.<sup>134</sup> This only serves to perpetuate racism and reinforce harmful racial disparities, given the fact that Black, Indigenous, and People of Color are disproportionately targeted by all aspects of the CLS.

Furthermore, risk assessment tools can pathologize the lifestyles and practices of non-white, non-heteronormative ways of living as being more susceptible to crime. This criminalization of peoples' lives and cultures as indicators of crime utilize the same framework from the Moynihan Report of the 1960s that has been widely criticized for criminalizing non-white-heteronormative ways of living.<sup>135</sup> For example, the Ontario Domestic Assault Risk Assessment (ODARA) tool that the SMC intends to use for risk assessments related to DV has been widely criticized for its identification of non-heteronormative family structures as a risk factor for reoffense.<sup>136</sup>

### **The Risk-Needs-Responsivity (RNR) Model**

The Risk-Needs-Responsivity (RNR) model has recently been receiving attention within CLS reform efforts and informs the framework for many risk assessment tools. The RNR uses a set of factors called "criminogenic needs" to determine which interventions are best suited to prevent the likelihood that someone will be rearrested or reincarcerated, including: "Criminal history; Antisocial personality pattern; Procriminal attitudes; Social supports for crime; Substance abuse; Family/marital relationships; School/work; and Prosocial recreational activities."<sup>137</sup>

Primarily used inside prison to determine treatment and support for people currently incarcerated, the RNR has been proposed as a tool to guide decisions for diversion options at the pre-filing stage, and King County currently utilizes an RNR model in its Community Diversion Program. We oppose this proposal for several reasons. To begin, even if the intent of using the RNR model is diversion, the model is still based on the inherently racist risk

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<sup>134</sup> "Pretrial Risk Assessments," The Leadership Conference Education Fund, February 4, 2019, <https://civilrights.org/edfund/pretrial-risk-assessments/>.

<sup>135</sup> BlackPast, P. M. (2019, September 14). (1965) The Moynihan Report: [The Negro family, the case for National ACTION](#). Black Past. Retrieved September 16, 2021.

<sup>136</sup> "Statement to the Sentencing Commission on Ontario Domestic Assault Risk Assessment (ODARA)," Defender Association of Philadelphia (Defender Association of Philadelphia, February 19, 2020).

<sup>137</sup> James Bonta and D.A. Andrews, "Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation 2007-06," Public Safety Canada, January 31, 2018, <https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/rsk-nd-rspnsvty/index-en.aspx>.

assessment model, which will undoubtedly lead to further racial disparities.<sup>138</sup> In particular, we emphatically oppose a tool that assesses an individual's needs and supports they may receive based on conviction history. Using conviction history as a way to assess the likelihood that an individual will "reoffend" only serves to reinforce biases and does nothing to hold the system accountable for the historical and structural racism that disproportionately traps Black, Indigenous, and People of Color.

Additionally, the RNR model is a deficit-based approach that does not take the broader social context into account. From a public health perspective, the metrics utilized by the RNR model are deficit-based.<sup>139</sup> To define one's ability to access needs, the RNR model focuses on negative aspects impacting individuals, such as prior interactions with the system, negative relationships, and lack of employment or education. It does not include strength or asset-based criteria which recognize and strengthen an individuals' resources and capacity. Ultimately the RNR model lacks a trauma-informed lens and risks pathologizing people for the impacts they experience simply by living within the broader context of systemic oppression.

Finally, the RNR model uses a problematic one-size-fits-all approach that makes assumptions about individuals based on the "group" they are associated with, leading to disparities in accessible support.<sup>140</sup> One particular issue with that model is also the lack of accounting for intergenerational trauma (which particularly impacts Black and Indigenous communities). This singular approach disproportionately supports white people over Black, Indigenous, and People of Color.

The RNR model, despite its distinction from pretrial risk assessments to guide diversion decisions, does not do enough to move away from the traditional pathways of the CLS. We reject the RNR model at any stage of the criminal legal process. Furthermore, we call on the City to avoid the use of any data-driven and algorithm-based decision making tools within the criminal legal system, and to end the practice where it currently exists.

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<sup>138</sup> Nathan James, "Risk and Needs Assessment in the Criminal Justice System," National Institute of Corrections, January 14, 2021, <https://nicic.gov/risk-and-needs-assessment-criminal-justice-system>.

<sup>139</sup> Jan Looman and Jeffrey Abracen, "The Risk Need Responsivity Model of Offender Rehabilitation: Is There Really a Need for a Paradigm Shift?," *International Journal of Behavioral Consultation and Therapy* 8, no. 3-4 (2013): pp. 30-36, <https://doi.org/10.1037/h0100980>.

<sup>140</sup> Tony Ward, Joseph Melser, and Pamela M. Yates, "Reconstructing the Risk–Need–Responsivity Model: A Theoretical Elaboration and Evaluation," *Aggression and Violent Behavior* 12, no. 2 (2007): pp. 208-228, <https://doi.org/10.1016/j.avb.2006.07.001>.

# Conclusion

We produce this report with a deep sense of urgency, in search of solutions to address the multiple crises unfolding in our city, in our country, and in the world. The violence of the status quo and the rising climate of white supremacist backlash are felt acutely in our communities. We feel the impacts of failed institutional policies most acutely in the funerals, memorials, and hospital visits for those who leave us too early, while we reel from the shock of too many premature deaths. We feel the impacts of failed housing policies when we see on social media yet another community member fundraising to pay rent, or when we work three jobs and barely make ends meet. We feel the impact of budget cuts to social services, or the absence of a non-coercive and dangerous civilian response system, when we scrap together our limited resources and time, taking turns to care for a friend going through a mental health episode. We do not want to ask for help at the risk of our loved ones losing their lives. We can do it and we will keep doing it because we love them, but it is not easy. Crises take emotional tolls, and they are also financially costly. And they do not stop.

We build upon the rich legacy of community resilience and organizing in Seattle, on occupied Duwamish land. We are inspired by the boldness and courage of our communities, especially the young people, during the George Floyd Rebellion in Seattle and beyond. Even as the institutions will minimize, or criminalize their actions, we know that their organizing has pushed long-awaited changes within our city. The institutional players will try to claim credit as they always do, but we know better.

We share these recommendations with City Council and our communities in hopes that they build upon ongoing efforts to shrink and reduce the footprint of the criminal legal system (CLS), a death-making institution, and divert resources to other areas that are life-affirming such as housing, food access, sustainable and healthy employment, and education. Our communities deserve to thrive.

We do this work for ourselves, our loved ones, our youth, those who came before us, and those who will come after us.

*"We do not inherit the Earth from our ancestors,  
We borrow it from our children."*

**Chief Seattle**