



King County

Law, Justice, Health and Human Services Committee

STAFF REPORT

Agenda Item:	7	Name:	Polly St. John
Proposed No.:	2011-0205	Date:	April 26, 2011
Invited:	<ul style="list-style-type: none"> • Thomas Kuffel, Deputy Prosecuting Attorney 		

SUBJECT

AN ORDINANCE establishing interim eligibility conditions for pretrial defendants' participation in alternatives to adult secure detention. Pretrial individuals that are charged with a violent offense or sex offense and have one or more convictions of a violent offense or sex offense, as defined in RCW 9.94A.030, in the prior ten years would not be eligible to participate in alternatives programs. In addition, pretrial defendants that are charged with a domestic violence felony offense and have one or more convictions of a domestic violence felony offense in the prior ten years are not eligible to participate in the alternative programs.

These interim restrictions would be in effect until a pretrial risk assessment tool is validated and in use to guide pretrial release decisions. These proposed interim conditions would expire sixty days following the acceptance by motion of the report required in Ordinance 16953 that describes the implementation and use of a pretrial risk assessment tool.

This item is briefing only; no action will be taken on Proposed Ordinance 2011-0205 at today's meeting.

SUMMARY

Proposed Ordinance 2011-0205 would establish eligibility conditions for participants that may be served by CCD. It would do so by imposing requirements for participation in the alternative programs until a pretrial risk assessment tool has been tested and validated and the Council has accepted a report on the use of the tool. The proposed interim eligibility conditions would apply to a specific subset of defendants:

1. An individual that is charged with a violent offense or sex offense and has one or more convictions of a violent offense or sex offense, as defined in RCW 9.94A.030, in the ten years before the date of the charged offense, and

2. An individual that is charged with a domestic violence felony offense and has one or more convictions of a domestic violence felony offense, as defined in RCW 9.94A.525, in the ten years before the date of the charged offense.

These proposed interim conditions would expire sixty days following Council acceptance by motion of the report required in Ordinance 16953 that describes the implementation and use of a pretrial risk assessment tool.

BACKGROUND

Ordinance 16953 was passed by the Council in October 2010. This ordinance set policies regarding the development, adoption and use of a pretrial risk assessment tool for the adult detention population; requirements are listed in **Attachment 4**. The use of a pretrial risk assessment tool would assist the Court by supplementing existing information that the Court uses when making decisions. The Court currently uses information compiled from a number of sources, **Attachment 2**. A pretrial risk assessment tool could be used to identify common factors that may be predictive of failure to appear in court and that could possibly result in a danger to the community. A pretrial assessment tool weighs objective criteria such as past criminal history, ties to the community, current or previous employment, and other factors in order to assess the risk that a defendant will fail to appear before the court or reoffend while awaiting trial.

Community Corrections Alternative Programs

The county's Community Corrections programs were established by the Council in Ordinance 14561 to reduce the use of secure detention and to provide effective interventions for individuals involved in the justice system. The CCD programs use evidence-based practices, when possible, that promote pro-social behaviors and lifestyles. These alternatives programs and services are available to persons charged with an offense who are incarcerated or who are facing incarceration upon judicial order. In order to participate in an alternatives program, a person must be statutorily eligible (according to state law) and be ordered to the program by the Court. **Attachment 3** describes the individual CCD alternatives programs.

Pretrial Risk Assessment Workgroup

One of the requirements included in Ordinance 16953 is that the pretrial risk assessment workgroup proceed with development of a tool and to report quarterly on the progress toward development and implementation.

A Pretrial Risk Assessment Workgroup convened by the Adult Justice Operational Master Plan (AJOMP) Advisory Committee¹ in 2009 and is pursuing the development of a validated pretrial risk assessment tool for use in King County. The Office of Performance, Strategy and Budget (OPSB) has hired a project manager, Robin Halberstadt, to help oversee this work. (Michael Gedeon, a senior OPSB policy advisor,

¹ The workgroup members include representatives from DAJD, OMB, Superior Court, DJA, District Court, PAO, and Council staff.

has worked with this group since its inception and is also supporting the project.) A Request for Proposal (RFP) was issued by the County in December 2010 and Assessments.com is the preferred vendor. A contract for services should be finalized by the end of April 2011. The Workgroup has reviewed the scope of work and schedule for the consultant contract. The group meets bi-weekly to discuss progress of the overall project and to provide input and approval when needed. The consultant's body of work to develop the tool is anticipated to be a two year project. The current contract schedule anticipates that the consultant's final report will be completed by the end of April, 2013. **Attachment 5** provides background information on assessment tools.

ANALYSIS

If enacted, proposed Ordinance 2011-0205 would do the following:

1. Place conditions on the use of county alternatives to incarceration programs for pretrial defendants who are charged with a violent or sex crime and who have a history of violent or sex crime convictions within the last ten years;
2. Place conditions on the use of county alternatives to incarceration programs for pretrial defendants who are charged with domestic violence felony and who have a history of a domestic violence felony conviction within the last ten years; and
3. Continue the conditions until sixty days after a motion is accepted by the Council on implementation of a validated pretrial risk assessment tool.

Eligibility Conditions on the Use of County Alternative Programs

If the ordinance containing the eligibility conditions is approved by the Council, DAJD would no longer have the option provide the three alternative programs (WER, EHD, and CCAP) for pretrial defendants who are accused of a violent or sex offense or a domestic violence felony and who have been convicted of a violent or sex offense or domestic violence felony in the previous ten years. The alternative programs option would not be available to this subset of defendants until a risk assessment tool has been developed, validated and report upon.

The intended purpose of establishing these eligibility conditions is to lower the risk to public safety and to reduce failure to appear rates by this subset of pretrial defendants until an assessment tool is developed, tested, and is in use by the court. The subset of defendants who were previously convicted of a similar crime in the ten year time frame who would be affected by this proposed ordinance may be considered a greater risk to reoffend or fail to appear in court. It is the intention of this proposed legislation to reduce risk to the public and ensure future appearance in court.

It is important to note that this subset of defendants remain be eligible for bail that is set by the judge. It should be noted that there is some level of risk to public safety or exposure to risk from defendants that are not in confinement, such as those who have posted bail. Alternatives to secure detention are intended to provide another level of conditions to reduce that risk.

Sunset of the Interim Conditions

Ordinance 16953 in Section 3 states that upon approval and use of a validated tool, the Executive will forward a motion within six months that describes implementation of the risk assessment tool. The eligibility conditions contained in Proposed Ordinance 2011-0205 would expire sixty days following the acceptance by motion of the report by the Council.

Data

CCD has reported data on the number of defendants meeting criteria with violent or sex charges and having a prior history of violent or sex convictions in 2009 and for the first six months of 2010.

There is currently no data compiled regarding the number of defendants with felony domestic violence (DV) charges with prior convictions. At this time, it is unknown what impact gathering this data for DV charged individuals would have on the Department of Adult and Juvenile Detention (DAJD). Staff analysis is ongoing.

2009 Cases

Of 957 active pretrial cases enrolled in CCD in 2009, 1.04% fell into the category of having both current and prior history of violent or sex charges. DAJD examined information on the disposition of each case for which the individuals were ordered into the alternative and found the following data related to Failure to Appear, completion of the program, and violations of the program:

- 2 out of the 10 (20%) Failed to Appear to Court: 1 for an omnibus hearing, 1 for a case setting.
- Of the 10 total cases, 40% successfully completed the program, 50% failed and there is 1 pending case.
- 6 out of the 10 cases violated the program in some way, including falsifying a UA or having a positive UA, failing to call, or failing to report to CCAP; 3 of the 6 were reinstated by the court.

2010 Cases

Of 595 active pretrial cases enrolled in CCD from January through June 2010, 1.51% fell into the category. DAJD examined the disposition of each case for which the individual was ordered into the alternative.

- 5 cases from CCAP were carried over from 2009.
- 3 out of the 9 (33%) Failed to Appear to Court: 1 for an omnibus hearing, 1 for a case setting, and the other due to being in-custody at the City of Kent.
- Of the total 9 cases, only 1 was successful as of June, 5 failed and there are 3 pending cases.
- 7 out of the 9 cases violated the program in some way including falsifying a UA or having a positive UA, failing to call, or failing to report to CCAP; 4 of the 7 were reinstated by the court.

For 2009 and 2010 combined, 3 defendants were booked into jail on new charges and there were 3 new cases filed – one for a violent offense and two for a nonviolent offense.

Examples of Cases Subject to Eligibility Conditions

The CCD has determined that the number of defendants meeting criteria for violent or sexual offenses who would have been affected by conditions in 2009 is ten defendants, out of a pool of 940 individuals who used CCD programs. In 2010, nine cases were identified out of 595 cases in six months.

The Chair of the Committee has requested that details from these case files be reviewed and made available for discussion purposes. To inform the discussion, **Attachment 6** provides summaries of the specific cases that were reported to the Pretrial Workgroup in October 2010. (The attachment includes information for 15 defendants of the 19 identified defendants. Three cases were later found to not fit the criteria of the ordinance and another is omitted due to unclear information regarding a previous out-of-state conviction.)

Summaries for each defendant are compiled from detailed charging papers and public court records. For privacy purposes some identifiers such as name, birth date, case numbers, exact dates, and judge have been removed. It should be noted that these case samples were reviewed by the Prosecuting Attorney's Office to ensure that the information accurately reflects the case files.

LEGAL REVIEW

This proposed legislation has been reviewed by the Prosecutor's Office. The PAO, in reviewing the legislation, stated that the Council has the ability via its policymaking authority under the charter, to set criteria for participation in an optional, County-created and funded program. No legal issues have been identified at this time. Staff analysis is ongoing.

NOTES

Adoption of the eligibility conditions would limit the use of alternative programs for this subset of defendants.

Committee discussion, direction, and further legal guidance may wish to consider the following points:

1. Eligibility conditions would not necessarily guarantee public safety from this subset of defendants that a tragic event would not occur.
2. Timelines for development and validation of a tool will extend for up to two to three years, during which time, the conditions would remain in place, and the subset of the pretrial population would not have access to the alternatives programs.

3. Contract defender agencies have indicated concerns that eligibility conditions could inequitably affect those who do not have the economic means to post bail.

ATTACHMENTS

1. Proposed Ordinance 2011-0205
2. Information Currently Used by the Superior Court at Arraignment
3. Description of Community Corrections Division Alternative Programs
4. Requirements of Ordinance 16953
5. Background on Pretrial Risk Assessment Tools
6. Case History Examples