

Criminal Justice Reform Ideas

Pre-Trial Release

Numerous studies have demonstrated that money-based bail systems systematically disadvantage people of color.¹ Additionally, in setting money-based bail requirements, courts often factor in the ability of the accused to purchase bail bonds for 10% of the bail amount. Purchasing such bonds often requires collateral far in excess of the actual amount of the bail required.² Less wealthy defendants who must purchase bonds never get this 10% back and often fall victim to predatory lending agreements.³

The County Council could address this problem in a number of ways: funding bail reform projects focusing, in particular, on community engagement, and investigating and funding a pilot project for community-based service providers who will facilitate court appearances for people with FTA history and, longer term, wrap-around services such as housing, treatment, medical insurance, and other stability factors. The pilot could be modeled off of the Alive and Free program used in juvenile court and could focus on individuals who are between the ages of 18 and 24 who have been charged with a crime and who face detention because of their FTA history.

This pilot would also be in keeping with DPD's decision to reallocate staffing to the investigation and arraignment calendars. Given the importance of these hearings to the outcomes of criminal cases, DPD will increase staffing from one attorney to four for the investigation and arraignment calendars.

The War on Drugs and Offender Scores

The impact of the War on Drugs lingers in the form of offender scores inflated by prior convictions.⁴ Because people of color and other traditionally disenfranchised groups were and continue to be over-policed, making them more likely to be convicted of drug offenses, these individuals carry with them an inflated offender score. Those

¹ Stephen Demuth, *Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees*, 41 CRIMINOLOGY 873 (2003). "Give Us Free": Addressing Racial Disparities in Bail Determinations, 16 LEGISLATION & PUB. POL'Y 919 (2013).

² See JESSICA SILVER-GREENBERT ET AL., "When Bail Feels Less Like Freedom, More Like Extortion" March 31, 2018.

³ *Id.*

⁴ KATHERINE BECKETT, ET AL., THE IMPACT OF PRIOR DRUG CONVICTIONS ON SENTENCING OUTCOMES: EVIDENCE FROM KING COUNTY (2013); GREGG BARAK, ET AL., CLASS, RACE, GENDER, AND CRIME: THE SOCIAL REALITIES OF JUSTICE IN AMERICA 286 (3d ed. 2010); Michael Tonry, *The Malign Effects of Drugs and Crime Control Policies on Black Americans*, THINKING ABOUT PUNISHMENT: PENAL POLICY ACROSS SPACE, TIME AND DISCIPLINE 81, 111 (2009); Sheri Lynn Johnson, *Unconscious Racism and the Criminal Law*, 73 CORNELL L. REV. 1016, 1017, 1023-31 (1988).

scores result in these individuals serving longer sentences for subsequent offenses than similarly situated white, wealthy defendants. We will not have meaningfully impacted the legacy of this racist war until we address the disguised stigma carried around by members of our community in the form of inflated offender scores. The King County Council can begin to address this issue by working with the Executive Department to create ways to under- or un-score prior drug convictions. The creation of a funded workgroup made up of community members, the Defense Bar, and Dan Satterberg's Office, and tasked with quantifying the impact of this history of discrimination and imagining ways, both within the existing sentencing laws, and by advocating for changes in the Sentencing Reform Act would be an important first step in understanding and addressing this problem.

Jury Diversity

Black Defendants tried by all-white juries are convicted at higher rates than white defendants tried before all-white juries. That disparity disappears when there is even a single Black person in the jury venire.⁵ Data collected both by King County Superior Court and the Administrative Office of the Courts demonstrates that Jury venires in King County do not begin to reflect the diversity of the demographics within our county. Black defendants are routinely tried before all-white juries.

Although the above assertions are borne out by national studies, studies conducted in other states, and anecdotal accounts from our own County, we lack reliable, contemporary data on the effect jury diversity has on conviction rates in King County. The perception of the injustice created by juries not made up of "the peers" of defendants, who are disproportionately of color, deters the defendants' election of jury trials, increases acceptance of plea bargains, and forces defendants to elect bench trials when doing so contradicts their interests.

The King County Council could make funding available to study the impact of jury diversity on conviction rates of Black defendants versus white ones. In addition, the Council should adopt a resolution against trying Black defendants to all-white juries. The resolution should urge the court to summons a new venire until the venire includes a Black individual.

⁵ A study of felony jury trials in Florida over a 10-year period revealed that the presence of at least one Black person in the jury pool substantially reduced the conviction rate for Black defendants, even when the seated jury was all white. Shamina Anwar, *et al.*, *The Impact of Jury Race in Criminal Trials* 127 Q. J. Econ. 1017 (2012). Similarly, studies of mock juries concluded that the presence of Black jurors in the jury pool reduced the likelihood of white jurors to believe, at the close of the evidence but before deliberations, that the Black defendant was guilty. Samuel R. Sommers, *Determinants and Consequences of Jury Racial Diversity*, 2 Soc. Issues & Pol'y Rev. 65, 87 (2008). Samuel R. Sommers, *On Racial Diversity and Group Decision-Making: Identifying Multiple Effects of Racial Composition On Jury Deliberations*, 90 J. Personality & Soc. Psych. 597 (2006). This result follows from the research that group decision making, in general, benefits from more heterogeneity of membership. See Christine S. Carbone, *et al.*, *Diversity and the Civil Jury*, 55 WM. & MARY L. REV. 837, 838 (2014); *accord*, Sommers, 90 J. Personality & Soc. Psych., at 606.

Jail Law Library

Access to well-maintained, meaningfully supplied law libraries provides innumerable benefits to pre-trial detainees. By simply funding and mandating an expanded, modernized law library and providing for regular access by inmates to the library within the King County Jail, the Council could immeasurably improve defendants' sense of empowerment, confidence in conferring with their attorneys about their cases, and deciding, more independently, whether to accept a plea bargain or proceed to trial. Access to such a legal library would be a simple but deeply important investment in the reform of our criminal justice system.