**Community Diversion Program (Adults)**

The PAO proposes to divert from the judicial system approximately 1,000 of the lowest-level first-time property and drug offenders each year that would have had felony charges filed in Superior Court, and instead refer these offenders to community-based alternatives that emphasize restorative justice and restoration for harmed parties. Ineligible offenses include crimes against persons, violent crimes, domestic violence, sexual assault, crimes with weapons or other concerning facts as relayed by law enforcement.

According to the PAO, the intent of the program is to intervene before the first felony conviction and avoid the significant collateral consequences of a first felony, including occupation/licensing restrictions, housing restrictions, education/scholarship restrictions, and welfare implications.

***The 2021-2022 proposed budget includes $289,422 for planning only***

The major components of this program have not yet been finalized and thus the proposed budget only includes planning dollars. The proposed budget for the Office of Performance, Strategy, and Budget includes $289,492 for a TLT for program development through mid-2021 in coordination with the Department of Community and Human Services, the Department of Public Defense, the Prosecuting Attorney’s Office, and the community.

The General Fund reserve includes $2.5 million to implement the program once it has been developed. The $2.5 million is not appropriated in the proposed budget and thus the Executive will need to seek expenditure authority from the Council prior to expending these funds.

***What are the eligibility criteria?***

The CDP program is intended for first-time, low level felony property and drug related offenses such as theft, car theft, possessing stolen property/identification/financial information, selling stolen property, damaging property, and drug crimes (possession or delivery) with a comparatively small amount of drugs*.*Violent crimes and crimes against persons would not be eligible. Additionally, the PAO notes this program will not be available for people with a repeated felony history, or where there are concerning fact patterns (such as stalking or the person has exhibited the potential for domestic violence or sexual assault), or concerning misdemeanor history. Law enforcement will also be given a chance to weigh in if there are specific concerns.

The PAO reports the CDP is primarily focused on felons because that group has the collateral consequences associated with a felony which contributes to recidivism.  However, in an effort to be equitable, the PAO is exploring options for defendants who commit similar misdemeanors.

The PAO reports specific eligibility standards and programming details will be developed and refined in collaboration with partners in the community and the county criminal justice system using the planning models that were used to define eligibility for other diversion programs such as LEAD, Drug and Mental Health courts.

***Restitution will be a key part of CDP***

According to the PAO, when restitution is ordered in the current system, it is paid in small increments over several years, if at all. This program will include a Victim’s Restoration Fund, which will enable victims to submit proof of their out of pocket expenses and be reimbursed up front. The PAO expects to cap the restitution amount to no more than $10,000 per victim and estimates $300,000-$350,000 (annually) will more than cover the 1,000 cases that are projected to be diverted.  The restitution will be for individual victims only; no corporate victims.

In addition, the state Crime Victim Benefits Fund is available for all medical and counseling costs. According to the PAO, that fund is currently very inaccessible for many harmed parties and so the CDP program would provide resources in helping to fill out forms and provide direct basic needs support.

***How does CDP compare to current court process?***

As shown below, the CDP program will divert first-time felonies out of the court system and avoid multiple hearings and touch points with the legal system.

**Typical Case Flow Comparison for First Time Low-Level Property/Drug Felony**

| **Current process**  | **Community Diversion Program** |
| --- | --- |
| Charges referred and then filed | Police submit offense to Prosecutor |
| Defense and PAO Counsel assigned | Experienced DPA reviews and screens for eligibility (eliminating repeat offenders, reviewing criminal history, facts alleged, nature of the charges, police input) |
| Bail addressed in court hearing | Victims contacted to assess needs and coordinate payment from a Victim Restoration Fund |
| Multiple hearings take place over several months (and when individuals fail to appear for these multiple court hearings, it will then result in warrants, which lead to added arrests, jail bookings, and more court hearings) | Eligible offenders are evaluated by the county navigator and directed to a culturally relevant community-based program  |
| Case ultimately resolves, most often with a plea to reduced charges  | Community-Based program addresses needs and works with offender to acknowledge the harm caused by their actions |
| Sentencing occurs months or years after the crime – typically to time served |  |
| Restitution ordered but is paid in small increments over several years – if at all. | If an individual fails to engage, or commits a new offense, the facilitator will contact the prosecutor who reserves the right to file the original charge within the statute of limitations. |

***How does CDP compare to other referral programs?***

Other than the LINC (Legal Intervention and Network of Care) program serving low level offenders with mental illness, the CDP would be the only pre-filing diversion program available to adults charged with eligible felony offenses in King County. Community Center for Alternatives Programs (CCAP) and Drug Court are post-filing and thus the processes result in a criminal record as well as extensive engagement with the criminal justice system. According to the PAO, there would be some overlap with eligibility for Drug Court. Eligible offenders facing their first drug felony (typically lower amounts) would first be offered CDP rather than filing a case through Drug Court.

The LEAD program focuses on persons in immediate distress on the street, before or after arrest, but before referral to the PAO (nevertheless, the PAO has dedicated staff that review every case referred to LEAD for eligibility) and is generally for offenders with lower level offenses.[[1]](#footnote-1) The PAO notes the CDP is intended to be utilized post-arrest for individuals who are not in immediate distress and who are able to get themselves to a community provider to address the reasons as to why they are committing crimes. For example, a CDP participant may be a person caught trying to pass a forged check, whereas LEAD may be best for a person in active distress on the streets and in need of significant mental health services.

Lastly, Community Courts are for misdemeanors and thus do not serve the first-time felony offenders who would be served by CDP.

***What is the timeline for implementation?***

According to the PAO, the program design will occur through mid-2021 followed by design of community-based alternatives. The program will be implemented no later than the beginning of 2022.

***How much jail time will be avoided?***

At this time, the PAO does not have current data on how much jail time will be avoided.  Based on the types of offenses, these defendants would likely be out of custody, but subjected to arrests and bookings upon various failure to appear and/or violations of CCAP.  According to the PAO, typically even out-of-custody defendants are subjected to bookings due to these reasons.  Also, the PAO reports upon sentencing, defendants would typically be facing 0-90 days in jail.

***Program Evaluation***

The PAO and the Executive’s Office have noted the importance of program evaluation and both are supportive of funding program evaluation within the $2.5 million reserve. Details of the program evaluation have not yet been developed.

***Expected Savings***

The Executive reports this program will eventually be fully funded through staff savings in public defense, prosecutors, and the courts. The Executive’s proposed 2021-2022 budget includes reductions ($3,402,109 and 25.5 FTEs) directly attributed to this program in the Department of Public Defense budget beginning in 2022. To account for the anticipated reduction associated with the Community Diversion Program, PSB removed 1,000 felony and 1,200 misdemeanor adult cases from the staffing model for DPD in 2022. However, PAO has indicated that efforts to divert a large number of misdemeanors would be a separate initiative. If the number of misdemeanors is below the 1,200 used in the PSB model, that will make the projected reductions less achievable.

PSB notes that the other system savings generated by this proposal are harder to quantify. The diversion of cases is one of several factors that support a lower average daily population assumption in the jail. In addition, diversion of these cases reduces warrant activity and overall court activity, but these impacts are not easily quantified.

1. The operational changes to LEAD as a result of COVID-19 are not discussed here. [↑](#footnote-ref-1)