



# Public Review Committee

The committee was formed under R2020-76 and tasked 14 members of the public with reviewing Pierce County's policies, procedures and practices employed by county law and justice systems, per Resolution R2020-43 (amended by R2020-75) to inform Council in its development of an action plan to create equitable, diverse, inclusive and fair policies, procedures and best practices.



# Committee members

## **Facilitator:**

Retired Pierce County  
Superior Court Judge  
Frank Cuthbertson

- **District 1:** Pablo Monroy, Tim Reynon
- **District 2:** Erin Calata, Paul M. Herrera
- **District 3:** Ken Garcy, Anthony McDaniel
- **District 4:** Preston Anderson, Tisha Wosencroft
- **District 5:** Shalisa Hayes, Jim Walton
- **District 6:** Alfred Authorlee, Jim Cook
- **District 7:** Richard Benson, Roxanne Simon



# Law and justice review

The following branches and department internal reports were reviewed:

- Executive Branch
- Judicial Branch
- Sheriff's Department
- Prosecuting Attorney's Office



# Facilitator Judge Cuthbertson: What we learned

- African Americans are arrested in Pierce County at disproportionately higher rates; without disaggregation of data by type of offense, we don't know why.
- 90% of criminal defendants are poor and eligible for public defense.
- The mental health system is seriously broken in Washington, with the bulk of money going toward law enforcement and corrections, not mental health services. Major realignment of how money is spent is imperative to de-criminalize mental illness.
- Innovations within Pierce County's Judicial system like the District Court Resource Center, the DART program and emphasis on therapeutic courts over the last decade have had a positive impact on the county's minority population and the poor.
- Executive departments are making good faith efforts to deliver justice services fairly and equally, but only the Prosecuting Attorney's Office has a formalized diversity, equity and inclusion team responsible for long-term work to build staff competence to effectively serve the diverse populations within Pierce County.



# Committee observations and recommendations

- **More work is needed to examine systemic racism in the county's criminal justice system and develop solutions to address it:** Given the time constraints and the very narrow scope provided by the Council, the Committee was unable to develop full, complete, and comprehensive set of recommendations to address systemic racism in the county's criminal justice system.
- **Deep dive:** To create a plan to eliminate systemic racism from the criminal justice system a more thorough review and engagement with impacted community members and families is necessary. This should include exploration of the history of racism in the criminal justice system, examination of where it occurs in county services and how it affects the systems and people served.



# Observations and recommendations continued

- **Policy adoption and training:** Council should immediately adopt a policy for diversity, equity and inclusion to codify its commitment to this initiative and to express the importance of these beliefs and values at the highest level of county government. Council members should receive training on racial injustice, history of racism in Pierce County's justice system and cultural competency and participate in on-going training, require all senior leadership to do the same and require mandatory, on-going training for all county staff on the county's diversity, equity and inclusion policy.
- **Community/stakeholder engagement:** Create strategic community engagement plan encompassing all county departments.
- **Gaps in data:** More data is needed to drive smart decision making.
- **Contributing factors to inequity:** Reviews identified strong evidence of the impact of behavioral health, socio-economic, challenges of individual, institutional and systemic inequality and racial disparities at each point in the system. These disparities must be addressed.



# Key recommendations

- **Review, approve and** fund a comprehensive, cost-effective, recovery-oriented Behavioral Health Strategic Plan to address the role of behavioral health and substance abuse in criminal justice system encounters;
- **Support** efforts to enhance law enforcement training and accountability;
- **Fund** the use of private laboratories for medical examiner death investigations and prioritize investigations of in-custody deaths, or other elements, to resolve the cause of deaths without delay;
- **Continue a Public Review Committee** as is, or in some form, as a permanent input infrastructure to provide community engagement/governance with further review of the law and justice systems in Pierce County, to assure internal stakeholder reviews are married with external and community stakeholders' needs and expectations.



## Sheriff's Department

### *Initial contact with criminal justice system*

- Major themes of the review:
  - Use of force policies/training, including 21<sup>st</sup> century police reform (Eight can't wait)
  - Community engagement
  - Body cameras/dash cameras
  - Demographic disproportionality in arrests



Prosecuting  
Attorney's Office,  
Assigned Counsel &  
Pretrial Services

***Initial detention and court  
hearings***

- Major themes of the review:
  - Capacity and equity in referral to alternative prosecution programs (specialty courts)
  - Equity in pretrial diversion
  - Impact of socioeconomic factors on people in the criminal justice system
  - Success rates and performance measurement of alternatives to incarceration programs
  - Prosecutorial role in use of force investigations



## Superior and District Courts

### ***Trials and sentencing***

- Major themes of the review:
  - Equity in jury selection
  - Impact of legal financial obligations (LFOs)
  - Effectiveness of therapeutic courts
  - Data analysis resources



Medical Examiner,  
Economic  
Development &  
Other impacts

- Major themes of the review:
  - Public access to medical examiner information
  - Relationship of economic issues and employment to criminal justice involvement



# Final thoughts

This review is a first step, but it should not be the last step.

***Committee member comments to Council***



**Pierce County Law and Justice Public  
Review Committee Report  
to  
Pierce County Council**



**November 2020**

# Pierce County Law and Justice Public Review

## FORWARD

*The Public Review Committee, created pursuant to Resolution R2020-76, was tasked with giving feedback to the Pierce County Council for its use in developing an action plan to prevent inequality and injustice for all residents of Pierce County. The Council Resolutions called for the Public Review Committee to specifically (1) identify gaps in the analysis provided by the Executive Branch Agencies and the Courts in response to Resolution 2020-43; (2) Identify best practices, policies and procedures for further consideration by the Council; and (3) recommend key priorities and strategies for consideration by the Council to achieve meaningful reform.*

*The Pierce County Council enacted R2020-43 which clearly sets out the context for the Public Review. The resolution states in relevant part:*

***Whereas***, as a community of considerable racial, ethnic and religious and other types of diversity, Pierce County has a complex history, which has included both significant efforts to achieve greater justice, equality and understanding, as well as unfortunate periods and events that have demonstrated the need for increased commitment, transparency, ideas and action to work towards these goals; and

***Whereas***, intersecting with dimensions of diversity are other critical underlying factors such as economic, health and educational disparities which lead to systemic racism; and

***Whereas***, it is increasingly imperative that we as a County assume the responsibility of facing the challenges and seizing the opportunities created through our diversity, and for our diversity [be] guided by the principle that all citizens are created equal and the rights of every citizen are diminished when the rights of one citizen is threatened; and

***Whereas***, we value the citizens of Pierce County and commit to fair and equitable services and transparent processes for every citizen, and we lament inequity and disregard for life and resolve to review and address systems and processes...

*R2020-43 was a strong statement by the Council affirming its commitment to restore public trust and confidence in the justice system for all residents.*

## **Community Concerns**

*In the past two years, several young men and women from black and indigenous communities have died in Pierce County at the hands of law enforcement officers; Jackie Salyers, Manuel Ellis, Bennie Branch, Daniel Covarrubias, and Said Joquin. These tragic deaths led to protest, prayer vigils and non-violent civil disobedience which continued during the spring and summer. The death of Manuel Ellis in 2020 particularly impacted the local community as his death followed the death of George Floyd one month earlier, with both men infamously echoing the same last words: "I can't breathe". While this public review does not consider particular cases, it does consider the underlying criminal justice policies and practices including use of force policies, training, citizen involvement in the independent investigation required by I-940 and the use of body cameras.*

*This public review did not allow time to fully consider the complex interplay of factors that lead to disproportionate numbers of arrests, legal financial obligations and other adverse impacts the justice systems has on poor people overall and people of color disproportionately. These factors include racially discriminatory Jim Crow laws dating back to the 1860's used to subjugate newly freed slaves. The public review also did not consider the peculiar history of extra-judicial lynching of African Americans from the 1860's through the 1960's which inform concerns by African Americans about police-involved shootings of black people. The Superior Courts and the Criminal Justice Training Academy recognize these as important issues, having included these topics in trainings.*

*Council passed R2020-76 to involve members of the public from all Council districts to independently review internal reports from the Executive and Courts. The Public Review Committee has functioned transparently, in an open and collegial manner that hopefully can begin to restore public trust and confidence in the justice system overall through its recommendations to Council.*

## **The Review Process**

*The review process began with each Councilmember appointing two members from their respective districts. The Committee appeared to reflect a cross section of the larger Pierce County Community to the extent possible. Black, Latinx, Indigenous people, male and female, veterans, and public officials with law enforcement experience, both rural and urban, were all involved in the review. In addition, with the technical assistance of staff, there was active input by additional Pierce County residents in writing and during public comment periods at meetings. The public review process was meaningful, based upon the diligence of the members and excellent support and commitment by County staff. However, it should also be noted that members expressed concern with the limited amount of time afforded for the public review of such a complex system.*

*The Public Review Committee agreed on a set of “ground-rules” which guided the deliberations and allowed for discussion of issues of race and poverty in a respectful manner. Because of the limited time, the Committee reviewed each section of the report from the Executive and the Courts separately each week with the assistance of Joseph Evans, Council Staff, the Sheriff, Prosecuting Attorney, Medical Examiner, Pre-Trial Services Chief Andrea Kelly, Michael Kawamura, Director of the Department of Assigned Counsel and Superior and District Court Judges. The weekly meetings allowed members to raise questions and deepen their understanding of the inner workings of the Pierce County Justice System.*

*Members of the Public Review Committee reviewed materials prior to meetings, often submitted comments in writing to staff and requested and reviewed resources beyond the Executive’s report. For example, the members requested, and Council staff obtained, training materials from the Washington CJTA (Criminal Justice Training Academy), the Arnold Foundation Grant to improve Pretrial Services and Washington Administrative Code (WAC 139-12) regarding Independent Investigations of Law Enforcement personnel pursuant to I-940.*

### **Gaps in Data**

*The Criminal Justice Dashboard data provided along with the Executive’s report was helpful, however, the data also raised questions that require further analysis. For example, the Committee requested that data showing disproportionality in the number of arrests by race be further disaggregated by charging offense. For meaningful reform, it is critical to know whether the disproportionality in arrests are for warrants pursuant to court orders, DOC violations or actual criminal behavior. Similarly, the Review Committee seemed to agree that data on mentally ill offenders, offenders with co-occurring substance abuse and mental health disorders would be helpful to understand the extent to which the justice system is being utilized most effectively or whether resources like enhanced mental health services are needed to make communities safer.*

### **Summary**

*The Executive’s review of justice systems, as well as the Court’s independent review, were intended to look at whether justice is administered equally in Pierce County. We learned that African Americans are arrested in Pierce County at disproportionately higher rates. However, unless the data is disaggregated by type of offense, it does not answer the question of why. We also learned that 90% of criminal defendants are poor and, according to federal guidelines, eligible for public defense.*

*The independent review by the Superior and District Courts showed several significant improvements over the past decade in the administration of justice in Pierce County. Some of the innovations such as the District Court Resource Center, are the result of a statewide federal lawsuit (Cassie Trueblood et.al. v. DSHS). Other innovations such as the DART program were formed through collaborations between the Courts, Prosecutor and DAC. Examples include emphasis on therapeutic courts, reduced use of money bail through pre-trial services, and forgiveness of non-mandatory legal financial obligations that have had positive impacts on minorities and the poor. Other examples include the District Court (Trueblood) Resource Center and Pierce County Juvenile Court which has been a national model of juvenile justice reform and reducing disproportionate confinement of minority youth.*

*Executive Departments appear to be making good faith efforts to deliver justice services fairly and equally. There are few if any examples of overt or invidious discrimination. However, only the Pierce County Prosecuting Attorney's Office has a formalized diversity, equity and inclusion team responsible for the long-term work of building competence to effectively serve the diverse populations within the County. The Review Committee expressed a strong desire to see a countywide diversity, equity and inclusion program targeted to all senior leaders and elected officials so that they can look at policies and practices, including budgeting, through an equity lens on an on-going basis.*

*Another major takeaway is that the mental health system is seriously broken in Washington State. While we spend millions on law enforcement and corrections, we spend little on mental health. The initial data suggests that we may need a major realignment in the way we deploy dollars and personnel to keep our communities safe. We can do better by decriminalizing mental illness.*

*Finally, it has been a pleasure to work with such a great group of concerned citizen volunteers, all of whom are clearly committed to making our community safe and fair for all residents.*

*Frank E. Cuthbertson*

*November 10, 2020*

# Pierce County Justice Public Review

## REPORT

### Background

The Public Review Committee was established through Pierce County Council Resolution R2020-76 to assist the Council in its efforts to understand factors contributing to systemic racism, and to ensure equity and fair delivery of justice services to the public. The Committee was tasked with reviewing reports provided to Council per Resolution R2020-43, and to inform the Council in its development of an action plan to create equitable, diverse, inclusive and fair policies, procedures and best practices within the county.

Over the course of seven weeks, the Committee reviewed reports from the Executive and Judicial branches of Pierce County government on the policies, procedures and practices of the Sheriff's Department, Corrections system, Assigned Counsel, Prosecuting Attorney, Medical Examiner, Economic Development Department, and Superior and District Courts. During the reviews, the Committee heard from representatives of each department and discussed with them the information provided in the reports, as well as additional related topics.

The Committee was charged with (a) identifying gaps in analysis or review in the reports provided by the County; (b) identifying best practices, policies, or procedures that should be further researched or developed; and (c) recommending key priorities and strategies for consideration in the Council's development of an action plan to achieve meaningful systemic reform.

The following pages summarize the results of the Committee's work. Much of the reviews and discussions served as an introduction to the complex functions of the criminal justice system and how individuals interact with it. The gaps, best practices and recommendations identified by the Committee are a starting point to address questions of diversity, equity, and inclusion within the system, and thus one of the recommendations is to continue the Committee's work as part of an ongoing, systematic, transparent review process. Detailed comments by members of the Committee and members of the public are included in the attached appendices to this report to provide an understanding of the various levels of analyses, backgrounds, and perspectives contributing to this review.

Two representatives from each Council district comprise the committee, each member with varied backgrounds and experiences which are reflected in their personal views and comments.

The Public Review Committee was facilitated by retired Superior Court Judge Frank Cuthbertson. The Committee members are:

- District 1:** Pablo Monroy, Tim Reynon
- District 2:** Erin Calata, Paul M. Herrera
- District 3:** Ken Garcy, Anthony McDaniel
- District 4:** Preston Anderson, Tisha Wosencroft
- District 5:** Shalisa Hayes, Jim Walton
- District 6:** Alfred Authorlee, Jim Cook
- District 7:** Richard Benson, Roxanne Simon

The following pages reflect the Committee’s observations and recommendations based on its review of policies, practices, and community perspectives on interaction with the criminal justice system in Pierce County. The included appendix summarizes the gaps, further research, and recommendations identified by the Committee, and includes written comments from Committee members and the public.

In addition to the observations and recommendations particular to each area of the criminal justice system, the Committee had the following general observations and recommendations:

1. More work is needed to examine systemic racism in the county’s criminal justice system and develop solutions to address it. Given the time constraints and the very narrow scope provided by the Council, the Committee was unable to develop full, complete and comprehensive set of recommendations to address systemic racism in the county’s criminal justice system.
  - a. The Committee recommends the Council take a deep dive into this paramount issue, either as a whole, or with the continuation of this Committee, and conduct a more thorough review and engage in discussions with impacted community members and families about ways to eradicate systemic racism from the county’s criminal justice system. This should include exploring the history of racism in the criminal justice system, examining where racism is occurring within the county’s services, and how it affects each of these systems and the residents they serve in order to create a plan to eliminate it from the county’s justice systems.

- b. As a starting point, the Committee further recommends that Council immediately adopt a policy for diversity, equity, and inclusion if such a policy does not yet exist, to codify the county's commitment to diversity, equity and inclusion, and as a way to express the importance of those beliefs and values at the highest level of our county's government.
  - c. To further demonstrate the Council's commitment to this issue and policy, the Committee recommends that Council members receive training on racial injustice, history of racism in the justice system, and cultural competency, and require all senior leadership to receive similar training on an on-going basis. In addition, mandatory, on-going training should be required for all county staff on the county's diversity, equity, and inclusion policy (see Key Recommendations 5 and 6 for more information).
- 2. Community/Stakeholder engagement. The Committee supports the development of a strategic community engagement plan encompassing all departments. This plan would serve to further engage the community, residents, service providers, and those who have received or are receiving services from each of the departments involved in this review, and solicit their input and feedback to help each department identify areas of success, areas of improvement, and additional gaps in services. Strategic community engagement could also include oversight and accountability functions in the form of (a) citizens oversight committees, (b) an extension of this Committee in some form to benefit from continuity and give a more long-term view of Pierce County policies, and (c) exploration and expansion of community policing models.
- 3. Gaps in data. There are gaps in data that would further guide and inform the Committee, and thus the Council, in making more substantive, data-driven recommendations, including understanding the effectiveness of current programs. The Committee appreciated the work undertaken by the County and led by Joseph Evans that provided cross-jurisdictional oversight and expertise to the ongoing work of criminal justice initiatives. There was agreement that this work should continue and expand to permit disaggregation of data, and to design a comprehensive, collaborative and intelligent approach to data collection and use to allow systemwide users to collaboratively solve complex public safety and justice problems; drive smart decision making; restore public trust and transparency; demonstrate compliance and sensitivity; dispel misconceptions; and add value to the investment and prioritization of public funds.

4. Contributing factors to inequity. The Committee identified strong evidence of the impact of behavioral health, socio-economic, challenges of individual, institutional, and systemic inequality and racial disparities at each point in the system. Addressing these disparities warrants efforts to promote economic and employment opportunities (e.g., within alternatives to incarceration), support the development of a more robust mental health system, and in-depth analysis of current policies and practices, such as disparities in initial police contact.

Additionally, the preliminary reviews conducted under the direction of R2020-43 were limited, as was the review by the Committee under R2020-76. As such, a full review of the law and justice system by the Committee was not completed, but instead a review of the internal reviews provided by County departments and agencies. The Committee noted that given the limits of its review, the Council should further engage in complete system reviews and marry internal reviews with external perspective, specifically by those that are impacted by or use the services.

### **Key Recommendations**

While the sections below include gaps, areas for further research, and recommendations by subject area, the Committee supports the following as high priority recommendations for the Pierce County Council to incorporate in its development of a plan of action:

1. ***To review, approve and fund a comprehensive, cost effective, recovery oriented Behavioral Health Strategic Plan to address the role of behavioral health and substance abuse in criminal justice system encounters:***
  - a. Support the expansion of the use of co-responders with law enforcement and understand what type of calls could be dispatched with co-responders or alternative responders.
  - b. Support the development of systemwide solutions to behavioral health issues, including collaboration with system providers, system users, and system agents, health care providers, social workers, and people with lived experiences of the behavioral health system.
  - c. Prepare for the loss of Trueblood settlement funds used for reducing time for in-custody competency evaluation.
2. ***Support efforts to enhance law enforcement training and accountability:***
  - a. Accelerate compliance with mandated crisis intervention training and investigate development of a local training program that includes community involvement in the development and teaching of the program's curriculum.

- b. Further understanding and transparency in the use of force methods, specifically vascular neck restraint, and a thorough review, including input from impacted communities and families, and revision of the Use of Force policy to reflect acceptable and best practices, where the sanctity of life is paramount.
  - c. Accelerate adoption of policies and funding that allow for the implementation of body cameras, including review of policy and potential need for reform of record retention laws.
  - d. Address gap in law enforcement accountability outside of prosecutorial decisions.
  - e. Accelerate implementation of requirement for completely independent investigations of police use of force, including implementation of the requirement to use community representatives on the Independent Investigation Teams.
  - f. Develop an overall training career development plan with tracking system for commissioned and non-commissioned staff.
  - g. Review all public safety collective bargaining agreements with an eye toward reforming contract provisions that impose barriers to accountability, performance, discipline, and transparency.
3. ***Fund the use of private laboratories for Medical Examiner death investigations, and prioritize investigations of in-custody deaths, or other elements, to resolve the cause of deaths without delay.***
  4. ***Continue this Committee as is, or in some form, as a permanent input infrastructure to provide community engagement/governance with further review of the law and justice systems in Pierce County, to assure internal stakeholder reviews are married with external and community stakeholders' needs and expectations.***
  5. ***Councilmembers, directors and mid-level managers receive Unconscious Bias training to help establish a baseline of understanding throughout County government. This training will provide a basis for better decision-making and policy development.***
  6. ***Embrace and provide organizational- wide leadership for diversity, equity and inclusion. Most governmental organizations have adopted Policy Statements, and Diversity, Equity and Inclusion initiatives outlining the organization's commitment to diversity.***

- a. The Council should take the appropriate legislative action to codify Pierce County's official beliefs in, and commitments to, Diversity, Equity and Inclusion.
- b. Commit to engaging and leading in the serious, difficult and deeply necessary work of antiracism.
- c. The Council should seek learning opportunities on diversity, equity and inclusion available for elected officials through the Washington Association of Counties, or other certified equity training institutions or businesses.

Most importantly, the Committee recognizes this review is a first step, but it should not be the last step. The Committee implores the County Council to take next steps, while continuing to be innovative and measuring results and understanding the impacts and including external stakeholders.

## *Sheriff's Department / Initial Contact with Criminal Justice System*

### **Summary**

The Committee reviewed the Pierce County Executive Work Group's presentation of the Sheriff's Department policies and practices with retired Sheriff Paul Pastor and Sheriff's Department Chief of Staff Mike Blair.

The major themes of the review were:

- Use of Force Policies/Training, including 21<sup>st</sup> century police reform (Eight can't wait)
- Community Engagement
- Body Cameras/Dash Cameras
- Demographic disproportionality in arrests

Committee concerns on use of force focused on the culture of policing, no-knock warrants, and tactics such as vascular neck restraint and militarization of police. The committee discussed the use of body cameras and issues related to public records requests and victim protection considerations.

The Sheriff's Department reported on its training practices, noting that the department complies with state Initiative 940, which requires law enforcement officers to receive training in de-escalation, first aid, and expanded mental health crisis interactions. The department also described its system of regularly reviewing use of force incidents.

Sheriff Pastor noted that encounters with citizens can be complicated by behavioral health and substance abuse issues, and that law enforcement are not necessarily best equipped to address incidents stemming from these issues.

The committee explored strategies for increasing community engagement and understanding law enforcement practices. The Sheriff indicated that the department is not properly staffed to support community policing. The committee favored the concept of law enforcement officers reflecting and connecting with the communities where they serve.

The committee discussed demographic disproportionality with initial justice system contact. Understanding how individuals experience first contact with the system, particularly law enforcement, requires more detailed study the committee concluded. Suggested further investigation includes how arrests originate, the contribution of traffic stops to overall arrests, and ultimate resolution of arrests relative to overall demographics.

## **Observations and Recommendations**

### *Recommendations*

- Continue this Public Review Committee to address diversity, equity, and inclusion and reform efforts
- Continue to support efforts to address behavioral health issues outside of law enforcement model, including increasing the number of co-responders
- Develop community policing program to build community trust and reorient the “culture of policing”
- Engage the community in use of force training by including impacted communities and families in the development and teaching of the training program's curriculum, and offer public participation in the training program

### *Gaps*

- Information on how “Brady” issues are addressed
- Data on use of force incidents/vascular neck restraint
- Information on training schedule, and transparency with how program is developed
- Report on efforts to comply with I-940, and role of citizen review
- “Blue Team” tracker review data from 2020
- Impact of Trueblood program on use of force incidents

### *Best Practices/Further Research*

- Acquire data on contact with law enforcement, including types of dispatched calls by demography and traffic stops to understand demographic disparities, and cause for engagement with law enforcement
- Investigate costs and policies associated with public records issues and body cameras, and develop policies protective of victims
- Engage with members of the communities they serve, particularly those communities largely impacted by racial injustices and inequalities through developing relationships with community advocates, stakeholders, opinion influencers, and public interest organizations, participating in community events, learning about the various cultures in the community, and involving community members in the department's policy making process
- Develop recruitment, hiring and promotion practices so that law enforcement officers reflect the communities they serve
- Form a Citizen Review Committee to review use of force incidents, engage impacted families and communities to help in the design, and work with labor unions to reduce barriers to accountability
- Conduct comprehensive study and review of best practices for law enforcement oversight models and methods currently in use for law enforcement
- Increase training in the areas of crisis intervention, de-escalation, explicit and implicit bias, cultural sensitivity, mental health assessment, death anxiety, and psychological realities of policing
- Further research root causes of disparities in treatment of Black, Brown, Indigenous people and other people of color in racial profiling, consent searches, arrest and booking, specifically, pretext stops and the role of minor offenses

## ***Prosecutor, Assigned Counsel, Pretrial Services / Initial Detention and Court Hearings***

The Committee met with Pierce County Prosecuting Attorney Mary Robnett, Deputy Prosecuting Attorney Diane Clarkson, and Director of Assigned Counsel Michael Kawamura to discuss the Pierce County Executive Work Group's presentation of policies and practices in their departments. Pretrial Services lead Andrea Kelley provided information on the pretrial services program used in the County. Overall, the Committee noted a willingness to be innovative and hopes that further work includes the involvement of the community it serves to assure change is meaningful and impactful to create a safe community.

The major themes of the review were:

- Capacity and equity in referral to alternative prosecution programs (specialty courts)
- Equity in pretrial diversion
- Impact of socioeconomic factors on people in the criminal justice system
- Success rates and performance measurement of alternatives to incarceration programs
- Prosecutorial role in use of force investigations

Committee discussion focused on the decision points after arrest, with initial detention and initial court hearings. Prosecutor Robnett described the department's participation in therapeutic courts, and Andrea Kelley provided details on the County's pretrial diversion program. Michael Kawamura illustrated the compounding effects of socioeconomic status for many involved in low-level offenses in the system, and the consideration of the safety of the whole community in both the short and long term when developing programs and making decisions within the criminal justice system.

The committee concentrated on analysis of the availability and effectiveness of therapeutic courts and diversion programs. The need for therapeutic court services exceeds available space. There is also a lack of service providers available to serve the court. There was agreement that therapeutic court effectiveness should be continually assessed, but necessary resources have not been directed to tracking and evaluation. The use of tele-hearings, which increased during the COVID-19 pandemic, were highlighted as benefiting participants who would otherwise fail to attend court due to other factors like employment or lack of transportation.

There was also discussion of the potential role of bias in charging decisions; the prosecutor discussed the department's internal efforts to ensure equity. Joseph Evans with Pierce County Assigned Counsel informed the committee on the County's work to identify racial disparities and causes for those disparities at decision points in the criminal justice system.

The committee also inquired about the prosecutor's role in investigating law enforcement misconduct, and potential citizen participation.

The committee learned about the pretrial services program, which has successfully helped those who cannot afford bail avoid incarceration, as well as efforts to study racial disparities in the program. The County is currently working with an outside organization to analyze data from the diversion program; the committee expressed interest in seeing that work done internally.

Discussion with Assigned Counsel focused on the intersection of poverty and race in the criminal justice system, particularly on how minor offenses can have cascading impacts on finances, housing, and employment. There was further discussion on how people come into the system, and how often contact with the criminal justice system stems from behavioral health, substance abuse, or economic issues for lack of other means of addressing them. The Committee inquired about the percentage of people charged who end up released without prosecution, and about individuals who may opt for pleas rather than wait for trial. It was noted that some people spend more time in jail in a pretrial status than their ultimate sentence requires.

### **Observations and Recommendations**

#### *Recommendations*

- Pursue Law Enforcement Assisted Diversion (LEAD) program
- Continue and expand use of remote hearings and night court
- Pursue and prioritize diversion programs and resources, most notably the Trueblood funding
- Glean data from LINX system to assist in informing impact, change, and disparity within communities impacted, and find partners (i.e., higher education) to create a universal data system

#### *Gaps*

- Tracking and performance measurement of therapeutic courts and diversion programs
- Data on offense and demographics, especially low-level offenses, and socioeconomic status
- Data on release on charging and personal recognizance release (PRR)
- More information on use of force investigations (e.g., Tacoma), and understand role in independent investigations of police use of force
- More data on NCF (no charges filed)

#### *Best Practices/Further Research*

- Ways to increase behavioral health and substance abuse treatment resources
- Alternatives to 911 for response to behavioral health issues
- Citizen involvement in use of force investigations (I-940 and RCW 10.114.011)
- Study best practices from other jurisdictions on diversion, including programs that include workforce development opportunities
- Review access to services outside of Tacoma

## ***Medical Examiner / Economic Development / Other Impacts***

The Committee met with Pierce County Medical Examiner Karen Cline-Parhamovich, and Pierce County Economic Development Director Betty Capestany to review the Pierce County Executive Work Group's presentation of policies and practices in their departments.

The major themes of review were:

- Public access to medical examiner information
- Relationship of economic issues and employment to criminal justice involvement

The committee discussed the process and policies of the Medical Examiner's Office, including the processes related to in-custody deaths and the independence of the medical examiner from the Prosecuting Attorney and law enforcement. The issues related to national staffing shortages and delays in state toxicology reports were explored. Karen Cline-Parhamovich described recent changes to how the office communicates information around deaths in Pierce County and the elimination of financial charges to families requesting a copy of an autopsy report.

The economic development discussion focused on the intersection of poverty and race within the criminal justice system. Betty Capestany discussed how the County targets capital formation and legal/educational skills related to starting businesses, especially for veterans, women, and minority populations. The committee also discussed the County's procurement, hiring, and contracting rules.

### **Observations and Recommendations**

#### *Recommendations*

- Continue Public Review Committee to address reform efforts
- Review use of private toxicology reporting
- Programs and options to address socio-economic opportunities and development in Pierce County

#### *Gaps*

- Information about CARES Act fund recipients by race, gender, veteran status
- County processes for outreach and recruitment
- Impact of local business on community

#### *Best Practices/Further Research*

- Pursue workforce development opportunities within alternative to incarceration programs
- Cultural competency training in working with Native American Tribes
- Review of contracting/procurement and hiring practices of the County, and programs to create access for residents and business to participate in County government

## ***Superior and District Courts / Trials and Sentencing***

The Committee met with Pierce County Superior Court Presiding Judge Garold Johnson, Judge Philip Sorensen, and Judge Elizabeth Martin, Superior Court Administrator Chris Gaddis, and Pierce County District Court Assistant Presiding Judge Jeanette Lineberry to review the Courts' report to the County Council on Court policies, procedures, and practices.

The major themes of the review were:

- Equity in jury selection
- Impact of legal financial obligations (LFOs)
- Effectiveness of therapeutic courts
- Data analysis resources

Many of the issues related to the courts were discussed in the reviews with the Prosecuting Attorney and Assigned Counsel, as well as in the discussions on Pretrial Services, such as therapeutic courts and diversion programs. In its review with the Committee, Superior Court Administrator Chris Gaddis described efforts in case management reform to ensure timely trials and provided information about a study of jury summons responses and community representation. Both courts provided information about their internal training efforts to ensure equity.

The committee inquired about jury demographics and learned that white residents are overrepresented in the jury pool, and the committee requested information on how the court tries to assure that juries represent the community. Implicit bias training for jurors was shared with the committee as one way the courts try to educate jurors before a trial.

The Court noted that data analysis would be required to further identify issues with jury diversity; resources for this work is not currently available. Judge Johnson explained what disqualifies individuals from the jury pool, and how the "challenge" process works.

The committee discussed per diem payments to juries regarding financial hardship and missing work. Court representatives reviewed the court fine forgiveness program, in which individuals are released from legal financial obligations, which can have considerable impact on those with limited financial means.

Further discussion addressed therapeutic courts regarding the Trueblood decision, and the court reviewed its work in revising criteria for admission for alternative courts, such as removing the restriction on gang affiliation, for example.

## **Observations and Recommendations**

### *Recommendations*

- Continue tele-hearings and night court
- Continue and expand LFO forgiveness program
- Include citizen involvement with any court-appointed committee or task force

### *Gaps*

- Demographic data on cash bail and sentencing
- Demographic data on jury selection
- Data analysis on demographics of therapeutic courts
- Review of civil litigants and Juvenile Court
- Impact of internal trainings on disproportionality
- Did not hear from stakeholders providing mental health services

### *Best Practices/Further Research*

- Explore application of Juvenile Court alternative sentences for adults
- Access to services outside of Tacoma
- Research economic status barriers to jury service and solutions
- Expand cultural competency training to include Native American culture

## Acknowledgements

The Committee would like to thank all the presenters representing departments within the Executive Branch, the Sheriff's Department, the Prosecuting Attorney's Office, and the Judicial Branch, with representation from both District and Superior courts, for the in-depth discussions with the Committee.

This includes:

- Pierce County Superior Court Judges Garold Johnson (Presiding), Elizabeth Martin, Philip Sorensen;
- Pierce County District Court Judge Jeanette Lineberry;
- Pierce County Superior Court Administrator Chris Gaddis;
- Retired Pierce County Sheriff Paul Pastor and Chief of Staff Mike Blair;
- Pierce County Prosecuting Attorney Mary Robnett and Deputy Prosecuting Attorney Diane Clarkson;
- Director of Assigned Counsel Michael Kawamura;
- Pierce County Medical Examiner Dr. Karen Cline-Parhamovich; and
- Pierce County Economic Development Director Betty Capestany

Notably, the Committee also wishes to express its appreciation to Joseph Evans from the Department of Assigned Counsel, who served as the Project Director for the Executive Branch review. His participation at all the committee meetings was a valuable resource. The Committee also thanks Andrea Kelley from the Clerk of Superior Court and lead for the County's Pretrial Services program, who served as an invaluable resource. Furthermore, the Committee wishes to acknowledge the members of the public that attended the meetings remotely and also provided comments, both orally and in writing.

The Committee extends thanks Judge Cuthbertson for his leadership in facilitating and leading the work of the Committee, and Council Chief of Staff Chris Carlson and the additional County Council staff who helped organize the meetings, kept detailed notes, and crafted this report. They were integral in helping the Committee complete the work requested by the Council.

Finally, the Committee wishes to express its deepest appreciation to the honorable County Councilmembers who have committed to creating a plan of action to eradicate systemic racism from the county's criminal justice system, and who gave each Committee member the honor and privilege to be involved in this important work. We thank you for this opportunity and look forward to continuing this important work.

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**1006 AI Authorlee Inquiry**

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**1016 AI Authorlee Assessment Worksheet**

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Criminal Justice Review of Policies and Practices

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**1026 Jim Walton Review**

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**0710 Eva Bowen & Sally Perkins**

Report of the Data Driven Justice Recommendations to the County Executive

Data Driven Justice: Using the SIM Structure to Identify Future Data Opportunities and Needs

Data Driven Justice: Explaining the Cascade of Disproportionality

**0922 Barbara Church**

**0922 Oneida Arnold**

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WASPC Seeks Feedback on Proposed Law Enforcement Reforms

**1021 Eva Bowen**

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The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It

**1023 Sara Dannen**

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Letter to Public Review Committee

Strategic Plan for Behavioral Health System Improvements

**1104 Kristy Gledhill**

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## [Related Legislation](#)

**R2020-43, Request for Law and Justice Departments' Policies and Procedures**

**R2020-75, Departmental Review of Policies and Procedures – Reporting Details**

**R2020-76, Public Review Committee for Law and Justice Departments' Reports**

## [Materials Provided to Council for Review per R2020-43](#)

**Criminal Justice Review of Policies and Practices: Sheriff, Prosecuting Attorney, Medical Examiner and Assigned Counsel**

**Pierce County Criminal Justice Review of Policies and Practices Presentation**

**Pierce County Criminal Justice Review Economic Development**

**Review from Courts**

## Pierce County Justice Public Review

### **Facilitator's Summary**

#### Purpose

The Public Review Committee created pursuant to resolution R2020-76 has been tasked with giving feedback to the Pierce County Council for its use in developing an action plan to prevent inequality and injustice for all residents of Pierce County.

The Council Resolutions called for the Public Review Committee to specifically (1) identify gaps in the analysis provided by the Executive Branch Agencies and the Courts in response to Resolution 2020-43; (2) Identify best practices, policies and procedures for further consideration by the Council; and (3) recommend key priorities and strategies for consideration by the Council to achieve meaningful reform.

#### Process

The review process began with each Councilmember appointing two members from their respective districts. The Committee appeared to reflect a cross section of the larger Pierce County Community to the extent possible. Black, Latinx, Indigenous people, male and female, rural and urban were all involved in the review. In addition, with the technical assistance of staff, there has been active citizen input posted in writing and during public comment periods during the meetings.

The Public Review Committee agreed on a set of “ground-rules” which guided the deliberations and allowed for discussion of issues of race and poverty in a respectful manner. Because of the limited time the Committee reviewed each section of the report from the Executive and the Courts separately each week with the assistance of Joseph Evans, Council Staff and the Sheriff, Prosecutor, Medical Examiner, Pre-Trial Services Chief Andrea Kelly, Michael Kawamura, Director of the Department of Assigned Counsel and Superior and District Court Judges. The weekly meetings allowed members to raise questions and deepen their understanding of the inner-workings of the Pierce County Justice System.

Members of the Public Review Committee reviewed materials at home before meetings, often submitted comments in writing to staff and, in addition, requested

and reviewed resources beyond the Executive's Report. For example, the members requested and Council staff obtained, training materials from the Washington CJTA (Criminal Justice Training Academy), the Arnold Foundation Grant to improve Pre-trial Services and Washington Administrative Code (WAC 139-12) regarding Independent Investigations of Law Enforcement personnel pursuant to I-940.

The public review process was meaningful, based upon the diligence of the members and excellent support and commitment by County staff. However, it should also be noted that members expressed some frustration with the compressed amount of time afforded for the public review of such a complex system.

### Data

The Criminal Justice Dashboard data provided along with the Executive's Report was helpful. However, the data also raised questions that require further analysis. For example, the data showing disproportionality in the number of arrests by race, committee members requested that data further disaggregated by charging offense. For meaningful reform it is critical to know whether the arrests disproportionality in arrests are for warrant, pursuant to court orders, DOC violations or actual criminal behavior. Similarly, the Review Committee seemed to agree that data on mentally ill offenders, offenders with co-occurring substance abuse and mental health disorders would be helpful to understand the extent to which the justice system is being utilized most effectively or whether or resources like enhanced mental health services are needed to make communities safer.

An important Gap the Committee seemed to focus in on was the need to further analyze the data the County collects on an ongoing basis. DAC, Prosecutor and Courts all appear to be limited in their ability to perform the data analysis needed to determine the efficacy versus the potential discriminatory bias in their policies and practices. This is an important issue because of the consensus that "*data driven decision making*" is key to effective reform by the Council. There is data available through the County LINX system, through the Federal Court Trueblood Initiative, and the Arnold foundation. Although Juvenile Court was not represented, it was cited as a national leader in detention reform based on its application of data driven decision making.

There were public comments regarding the Data Driven Justice Initiative and public comments suggesting a partnership between local academic institutions and the County to further analyze existing data as well as data from other law enforcement jurisdictions in Pierce County showing disproportionate numbers of arrests of African-American and indigenous people. The Public Review Committee was introduced to the “Sequential Intercept Model” for understanding how a citizen moves through the justice system.

### **Pierce County Sheriff’s Department / Corrections**

The Sheriff’s report generally considered all of the nationally recognized issues regarding 21<sup>st</sup> Century Police Reforms including “Eight Can’t Wait”. These are best practices or promising practices for improving policing in low-income and minority communities.

#### Gaps Requiring Further Analysis:

Disaggregated arrest data for all law-enforcement jurisdictions.

#### Best Practices:

1. The Sheriff’s Dept. has decided to go forward with **body cameras and dash cameras**, however the timelines are not clear. This initiative may have the greatest impact on improving public trust and confidence in law enforcement and as a significant deterrent to unreasonable use of force by police and deputies. One of the Committee members who is a local law enforcement Chief concurred with the Sheriff and indicated that his jurisdiction has already begun the use of body cameras. State legislation to protect privacy may be necessary to support this initiative.
2. The Sheriff’s Department has adopted a **No Chokeholds Policy**. However, the policy allows for certain vascular neck restraint (VNR) techniques. The Sheriff and Review Committee both recommend follow up with citizens interested in learning more about this and other use of force policies.
3. Training for experienced officers should be updated with recently developed **training by the CJTA on bias and policing in minority communities** as well as with training on I-940 and WAC 139-12 on Independent Police Investigations.

4. **Independent Investigations of Law Enforcement Involved deaths** has not been implemented in Pierce County. The requirement of an independent investigation is established by statute and its implementing regulations have now been promulgated. These investigations are required be transparent, to involve citizen review and regular timely notice to families of the deceased. In Pierce County at least one case has been referred to the WSP and Attorney General for investigation and prosecution due in part to a flawed investigatory process. Other recent cases have not included citizen review. Law Enforcement has established a County-wide Force Investigation Team to avoid conflicts of interest however citizens are not involved. Independent Investigations in Pierce County must conform to state law WAC (139-12). Sheriff recommends a panel be convened to explore how to involve citizens in a transparent process.
5. **Mental Health Co-Responders** is a best practice that is not adequately supported. Currently graveyard shift does not have access to mental health co-responders. There was significant support for sustaining and in fact expanding this very important program. Between 30-40% of jail inmates are estimated to have acute or chronic mental health issues<sup>1</sup> many with co-occurring substance abuse. These individuals, when they have decompensated may respond best to trained mental health co-responders rather than law enforcement according to members of the Committee and Law Enforcement personnel.

## **Pierce County Prosecuting Attorney**

### Gaps Requiring further Analysis:

1. Number and cost of drug prosecutions disaggregated by race. Numbers of defendants arrested for unlawful possession of controlled substances with a co-occurring mental health diagnosis. Comparative recidivism between defendants sentenced to prison and alternatives such as therapeutic courts.
2. Committee members encouraged the PCPAO to considered additional alternatives to divert people from incarceration who are substance abusers

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<sup>1</sup> See, Insane, America's Criminal Treatment of Mental Illness, Roth, A, (2018)

and those with mental illness including the Seattle based LEED program and detox programs.

3. Explore why black defendants are 62% more likely to serve prison time (for similar criminal conduct).
4. Cases resolved by Plea agreement, disaggregated by race.
5. The role of the public, if any, in independent investigation of police use of force resulting in a death.

#### Best Practices:

1. PCPAO is committed to continued training on implicit bias.
2. PCPAO is visible in the communities of color which promotes public trust and confidence.
3. PCPAO has indicated a willingness to hold officers accountable that compromise fair prosecutions.
4. PCPAO should not be responsible for prosecuting a Pierce County Sheriff for an alleged unreasonable use of deadly force due to obvious conflicts of interest.
5. DART directing low-level, 1<sup>st</sup> offense drug cases to district court where the defendant can be monitored by District Court Probation.

### **Department of Assigned Counsel**

#### Gaps Requiring Further Analysis:

1. DAC Director Mike Kawamura said it best, that the Criminal Justice System may not be appropriate to serve many people within the system, however, we are the one system that cannot say no. Accordingly, a major gap in the analysis in the Executive's Report is the intersection between Justice and other systems like behavioral health and chemical dependency.
2. DAC reports that 90% of defendants in Pierce County are determined to be indigent and eligible for legal assistance at public expense. If 70% of County tax dollars go to justice system and courts; is this an efficient way to make the County safer?
3. Understanding the historic intersections between race and disproportionate rates of poverty.

### Best Practices:

1. DAC and its contract attorneys actively monitor their compliance with Standards for Indigent Defense required by the State Supreme Court.
2. DAC has been training attorneys to most effectively deal with clients with mental health issues.

### **Medical Examiner**

The Medical Examiner is fairly new to Pierce County and is still becoming familiar with resources available to her office as well as the state Coroner statutes. The statute and related cases indicate that the ME may have an important role to play in assuring citizens that use of deadly force was reasonable or not through her inquest powers. The inquest power, derived from statute going back to the Washington Territory is an Executive Branch function. RCW 36.24 et seq.

### **Community Economic Development**

The Covid 19 Pandemic has clearly placed the Agency in a new role helping small businesses maintain viability through this crisis. It appears that they have provided much needed assistance to minority, women and veterans business among others.

### Gaps in Analysis:

1. The review Committee and Committee staff discussed some of the economic factors that have led to higher rates of poverty and lower rates of business ownership among African Americans through Jim Crow Laws, which led to discrimination in employment and De Jure barriers to black homeownership and wealth creation.<sup>2</sup>

### Best Practices:

1. Discussion centered on opportunities for the Agency to provide training and technical assistance to aspiring entrepreneurs in low-income and minority

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<sup>2</sup> See, The Color of Law, Rothstein, R. (2017).

communities, including vets, and legal requirements for business creation and facilitating access to investment capital.

## **SUMMARY**

Executive Departments appear to be making good faith efforts to deliver justice services fairly and equally. There are few if any examples of overt or invidious discrimination. It is true however, that policy choices that may otherwise appear to be innocuous can lead to disproportionate adverse consequences to minority communities. For example, the war on drugs has led to mass incarceration of African-American men and with little to show in reduction of substance abuse. The other major take-away is that the mental health system is seriously broken in Washington State. While we spend millions on law enforcement and corrections we spend very little on mental health. The initial data suggests that we may need a major realignment in the manner in which we deploy dollars and personnel to keep our communities safe. We can do better.

Finally, it has been my honor to work with such a great group of concerned citizen volunteers, all of whom are clearly committed to making our community safe and fair for all residents.

Frank E. Cuthbertson