

The Proper Take on *Blake*

An Opportunity for Meaningful Therapeutic Intervention

Judge David A. Larson

Federal Way Municipal Court

1. Introduction

The ideas and views expressed in this paper are my own and I do not speak on behalf of the District and Municipal Court Judges Association, Administrative Office of the Courts, Board of Judicial Administration, or any other individual, group, or association. In addition, none of the views expressed are intended to interfere with any request for funding by any stakeholder. To the contrary, the hope is that the views expressed herein will bolster those requests for adequate funding.

Nobody reading this paper needs an extensive briefing about the legal, fiscal, practical, and community impacts of the Washington State Supreme Court's decision in *State v. Blake*. Those impacts are well understood and documented. The debate now is focused on what we do about those impacts.

The temptation will be to focus on the narrow issue surrounding the invalidation of drug possession laws. That is an important issue to address, but a narrow focus on restoring drug possession laws and adding treatment options only for persons charged with that crime will be like adding air to a flat tire without fixing the leak. We need to make treatment options and incentives that promote recovery and law-abiding behavior available for people accused of all crimes commonly associated with behavioral health issues.

Many efforts to respond to *Blake* have focused on diversion programs and treatment as the response to an arrest for drug possession, but the issues we face in the courts and in our communities are much broader than this narrow focus on one crime. More important though...the people that everyone on both sides of the aisle are intending to address need opportunities for intervention to be available regardless of the crime they are accused of. Ideally, this intervention would be available before they are ever accused of a crime, but one thing that is certain is that fragmented piecemeal approach we have taken over the years has only served to frustrate organized, strategic, meaningful, effective, and successful intervention. Any proposal should include incentives and requirements for addressing behavioral health issues, but we cannot lose sight of the primary need to stop criminal behavior.

The purpose of this paper is to propose an effective and fiscally sound response to the behavioral health issues that are wreaking havoc on individuals, families, the criminal justice system, and entire communities. This paper is not intended to address whether to, or how to, restore drug possession laws.

2. Existing Efforts at Meaningful Intervention¹

The Legislature expressed a clear intent to support the judicial branch's efforts to establish specialty courts in 2015. See RCW 2.30.010. The Legislature also supported law enforcement's efforts to establish therapeutic approaches that avoid arrest and incarceration with Law Enforcement Assisted Diversion (LEAD) in 2019. See to RCW 36.28A.450. In 2021, the legislature's effort to stem the tide of *Blake* impacts until a permanent solution could be developed is found in SB 5476.

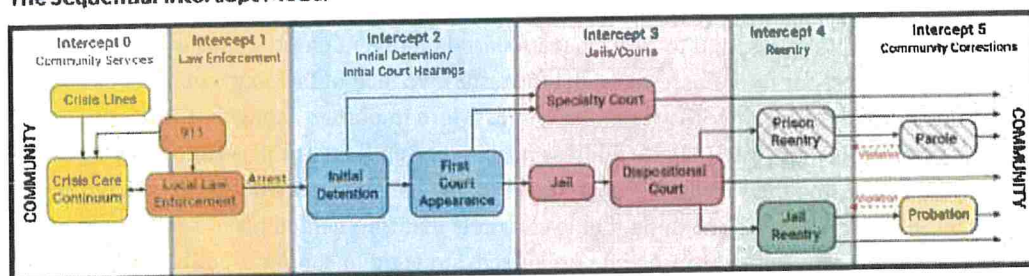
SB 5476 contained several promising provisions that provided needed funding for therapeutic efforts by communities, recovery navigators, law enforcement, and the courts. Just as important though, SB 5476 also encouraged the breaking down of silos to make treatment and services more effective and available. See Sections 1 and 2 of SB 5476. SB 5476 referred specifically to ESSHB 1477, a 2021 bill that emphasized the need for coordination at the intersection of the criminal justice and behavioral health crisis systems. See Sec. 1, Par. (5)(b) of SB 5476.

This means that the foundation has been laid and we have the opportunity now to breathe life into effective and fiscally sound solutions not just for people accused of drug possession, but accused of all crimes commonly associated with addiction and other behavioral health issues.

3. The Use of the Sequential Intercept Model

The Sequential Intercept Model (SIM) is the gold standard for intervention by the various stakeholders in the criminal justice system. SIM provides the opportunity for the desired coordination at the intersection of the criminal justice system, the behavioral health system, housing services, vocational and other adult education, and employment. However, this state lacks a SIM framework that would provide for a coordinated and integrated approach to the intersection of behavioral health and criminal justice.

The Sequential Intercept Model

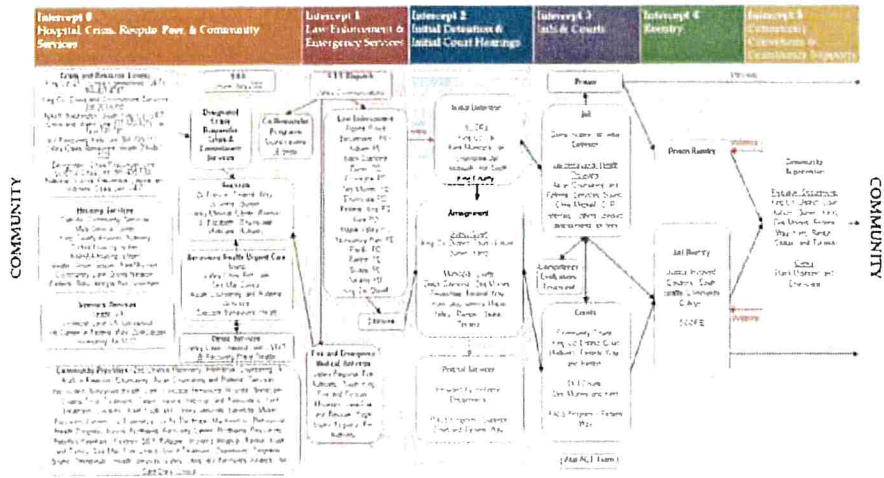


Source: Policy Research Associates, Inc., <https://www.prainc.com/sim/>.

Here is an example of "Sequential Intercept Mapping" prepared after the workshop hosted by Federal Way Municipal Court in February 2022. The workshop was attended by over fifty stakeholders from a variety of disciplines. The SIM map serves as a working document to then coordinate among stakeholders at the various opportunities for intervention at each intercept and to identify gaps in services and resources.

¹ Other existing and current legislative and non-legislative efforts may have been overlooked.

SEQUENTIAL INTERCEPT MODEL MAP – SOUTH KING COUNTY

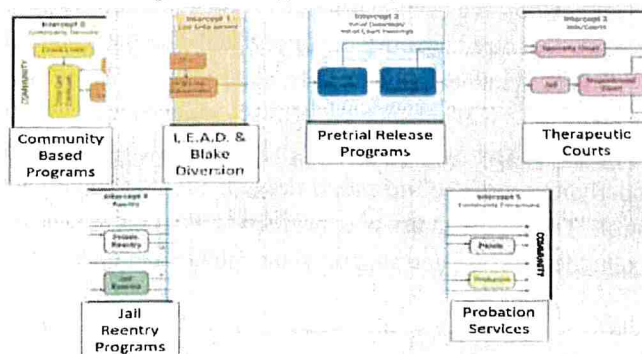


4. Our Current Fragmented Approach

Our current approach treats each stakeholder in each intercept as a stand-alone conduit of treatment and services. This siloed response leaves affected people lost in the requirements imposed by each stakeholder that will allow the affected person to remain part of the program the stakeholder proffers and supports. This response creates a program and system-based approach instead of a person-centered approach. In many cases, affected persons are in parallel programs at the same time which increases the chance of failure.

Currently, it is possible for a person to be engaged, or to have been engaged in the past, in LEAD programs, multiple specialty court programs, pretrial service programs, as well as treatment and services offered as part of a jail reentry program without other stakeholder knowledge or coordination of these other interventions. This limited to non-existent coordination among stakeholders is not intended nor desired. The lack of coordination is actually caused by the way the legislature has designed intervention. The current model of intervention results in the duplication of efforts that makes the response ineffective and costlier than it needs to be. It also shifts the burden of the response to cities and counties resulting in a patchwork of interventions. Tragically, it also creates a maze of programs and requirements that make it harder to be successful for the very people we are trying to assist.

Current Fragmented Program and System-Based Model



Washington State's law enforcement, court, jail, and probation structure properly allows each community to meet its criminal justice needs through local control, accountability, and flexibility. However, in recent years the counties and cities of this state have been confronted with a common crisis in criminal justice that knows no jurisdictional boundaries. This means that local impacts have become regional and statewide impacts. Sadly, the cost and logistics associated with the development of a response in local communities has resulted in stark voids of needed therapeutic intervention throughout the state; it is just too costly and difficult to stand up the needed infrastructure community by community.

Without an organized approach on a regional level, local communities cannot adequately address the behavioral health issues that are causing individual suffering and adverse community impacts. Local jurisdictions are left with nothing more than hope that the affected person will get needed help in another jurisdiction with more resources. As stated above, affected individuals are left with a fragmented system of care that makes success difficult.

The above realities result in countless lost opportunities to identify the specific individual's needs, and provide treatment for the issues presented for first time or return offenders suffering from behavioral health issues. Misdemeanors and gross misdemeanors are not "low-level offenses" or "just misdemeanors" because convictions for these offenses can have long-term adverse impacts to employment, education opportunities, and other life success for the person charged. Taking the first offense seriously will help countless people and communities in the long term if an attempt is made to intervene the first time someone is charged with a crime commonly associated with addiction and untreated behavioral health issues.

Without early, strategic, and organized intervention addiction and untreated behavioral health issues typically lead to a cycle of criminal behavior that affects the individual through a predictable route to repeated criminal charges, warrants, incarceration, lost housing, lost employment, and other significant individual impacts. Entire communities and regions are also affected through property loss, damage, costly medical intervention, and the overtaxing of government resources for law enforcement, jails, and courts.

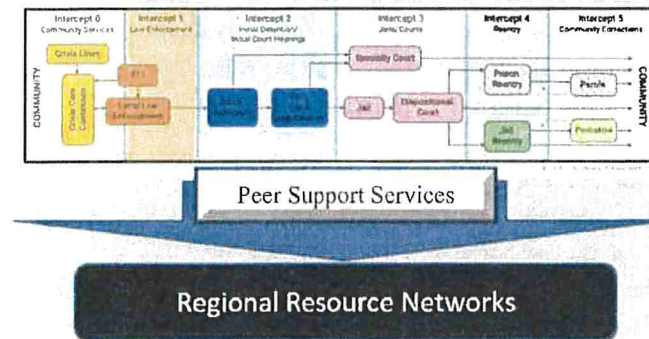
5. Solutions

There are solutions at our fingertips that can be implemented in cost-effective ways. Many of the solutions simply involve better organization and coordination of existing programs and services.

- a. **Encourage the Use of the Sequential Intercept Model in Coordination with Regional Resource Networks** – We need to provide local communities with a logistical framework and access to an organized network of support and care that can be accessed by the community, law enforcement, courts, jails, and probation departments in a defined geographic area. This will enhance the effort to reduce recidivism by maximizing existing resources. This approach will allow law enforcement, courts, jails, and communities to address underlying causes before and, if needed, after the condition or criminal behavior gets out of control. The idea is to use peer professionals as the warm hand-off from criminal justice stakeholders to care and support stakeholders that operate within a regional network.

Regional Resource Networks Linkage

Best Use of Resources for Best Results



The Legislature has already devoted resources to the use of peer support professionals for behavioral health care and has also committed to provide a network of community-centered behavioral health care to affected people. The next logical step would be to link the criminal justice system at each intercept of SIM to that same behavioral health, housing, social service system that would operate within a coordinated person-centered approach to recovery and success.

The way to encourage the use of SIM and regional resource networks is to adopt the proposed legislation attached as Appendix A.

- b. **Encourage Meaningful Early Intervention for All Crimes Commonly Associated with Behavioral Health Issues** - Many of the existing efforts at intervention focus on people that are already having significant issues. Social stigma keeps people from admitting that they have behavioral health issues the first time that they are in court or have other interactions with law enforcement, lawyers, judges, jails, and probation officers. In addition, there is a belief that misdemeanors and gross misdemeanors are not serious so traditional methods of rehabilitation, such as classes that teach people that theft is bad, are considered adequate intervention on first or even second thefts.

In many cases, the affected party is encouraged to avoid their behavioral health issues because it is much easier to attend one consumer awareness class than it is to attend months of treatment. This then leaves the behavioral health issue festering under the radar until the person commits enough crimes to be noticed by the system as needing therapeutic intervention. By then, the damage is done and the affected person is saddled with all the barriers that come with multiple criminal convictions.

It would be unrealistic to believe that everyone would magically stop committing crimes if they had early intervention so we need a system that increases intervention if people do not respond to early intervention with therapeutic courts as the ultimate tool to be used for the hardest cases after earlier interventions fail.

There are ways to encourage early intervention by adopting the proposed legislation attached as Appendix B. This suggested approach provides incentives to participate, accountability to succeed, and consequences for failing short of expectations.

The proposal allows a person to ask the court of limited jurisdiction the charges are brought in to stay the proceedings for up to two years. The affected person must assert that a behavioral health issue caused or contributed to the crime(s) alleged. The causal connection between the behavioral health issue and the crime(s) must be supported by a licensed behavioral health professional with a treatment plan designed to reduce recidivism. The case will be dismissed, the court file sealed, and no criminal background check would reveal the charges if the person completes the specified treatment program and commits no new crime during the stay. However, the defendant agrees that a guilty finding will be entered on the charge(s) if there is probable cause found that they committed a new crime and/or that treatment was terminated due to their willful non-compliance with treatment. There is an option extend the stay up to three years if it is warranted. The current proposal only gives one chance at this type of disposition.

- c. **Develop a Data Dashboard** - Part of the solution would be to create a "data dashboard" that would inform stakeholders of other past and current interventions. Stakeholders having access to needed data would help all concerned, including the affected person, to focus on a person-centered approach instead of the current program and system-based approach.

There is data that already exists across the disciplines that is partitioned in ways that keeps crucial information away from key decision-makers. For example, treatment providers can see all attempts at various treatment modalities, but defense counsel, prosecutors, and judges who need to make decisions on whether treatment should be required cannot see that data. Similarly, treatment providers do not have immediate access to criminal history to see how pervasive criminal activity has been for their patients.

Having access to limited case data such as charges, required conditions, deadlines, and court dates would help treatment providers become an ally of success for the affected person. An example of failure in the courts: A warrant for the arrest of the affected person is issued because they failed to appear for court because the judge was unaware that the affected person was at inpatient treatment and the treatment provider was unaware of a pending court date. Then, fresh out of inpatient care and stabilized for success the affected person is arrested and put in jail for failing to appear in court. In some cases, this results in the loss of housing and employment. This result, and many other adverse outcomes, are preventable if stakeholders had shared access to crucial information.

6. Conclusion

We are confronted with unprecedented needs of people affected by behavioral health issues and the needs of the criminal justice system as it navigates solutions when behavioral health and crime intersect. The hope is that we work together to develop a person-centered approach that is most likely to garner success for all concerned.

For additional reading see *Justice Involved Therapeutic Intervention* attached as Appendix C.

Appendix A

REGIONAL COORDINATED SUPPORT AND CARE NETWORKS

Sec. 1 NEW SECTION added to RCW 2.30 as follows:

Intent. The Legislature has expressed a clear intent to support the judicial branch's efforts to establish specialty courts under RCW 2.30.010 and law enforcement's efforts to support other therapeutic approaches to avoid arrest and incarceration with Law Enforcement Assisted Diversion (LEAD) pursuant to RCW 36.28A.450. The legislature also expressed a clear intent to require coordination at the intersection of the criminal justice and behavioral health crisis systems in Laws of 2021 (Engrossed Second Substitute House Bill No. 1477).

The Sequential Intercept Model provides the opportunity for the desired coordination at the intersection of the criminal justice system, the behavioral health system, housing services, vocational and other adult education, and employment. However, this state lacks a framework which provides for the coordinated and integrated approach needed to make the use of the Sequential Intercept Model successful.

Washington State's law enforcement, court, jail, and probation structure properly allows each community to meet its criminal justice needs through local control, accountability, and flexibility. However, in recent years the counties and cities of this state have been confronted with a common crisis in criminal justice that knows no jurisdictional boundaries. This means that local impacts have become regional and statewide impacts.

Without an organized approach on a regional level, local communities cannot adequately address the behavioral health issues that are causing individual suffering and adverse community impacts. Local jurisdictions are left with nothing more than hope that the affected person will get needed help in another jurisdiction with more resources. Affected individuals are also confronted with a fragmented system of care that makes success difficult.

The above realities result in countless lost opportunities to identify the specific individual's needs, and provide treatment for the issues presented for first time or return offenders suffering from behavioral health issues. Misdemeanors and gross misdemeanors are not "low-level offenses" or "just misdemeanors" because convictions for these offenses can have long-term adverse impacts to employment, education opportunities, and other life success for the person charged. Taking the first offense seriously will help countless people and communities in the long term if an attempt is made to intervene the first time someone is charged with a crime commonly associated with addiction and untreated behavioral health issues.

Without early and organized intervention, addiction and untreated behavioral health issues can lead to a cycle of criminal behavior that affects the individual through a predictable cycle of criminal charges, warrants, incarceration, lost housing, lost employment, and other significant individual impacts. Entire communities and regions are also affected through property loss, damage, costly medical intervention, and the overtaxing of government resources for law enforcement, jails, and courts.

The purpose of this act is to provide local communities with a logistical framework and access to an organized network of support and care that can be accessed by the community, law enforcement, courts, jails, and probation departments in a defined geographic area. This will enhance the effort to reduce recidivism by maximizing existing resources. This approach will allow law enforcement, courts, and communities to address underlying causes before and, if needed, after the condition or criminal behavior gets out of control.

Sec. 2 An Amendment to RCW 2.30.020 as follows:

Findings—Scope of therapeutic court programs.

(1) The legislature finds that judges in the trial courts throughout the state effectively utilize what are known as therapeutic courts and other therapeutic approaches to remove a defendant's or respondent's case from the criminal and civil court traditional trial track and allow those defendants or respondents the opportunity to obtain treatment services to address particular issues that may have contributed to the conduct that led to their arrest or other issues before the court. Trial courts have proved adept at creative approaches in fashioning a wide variety of therapeutic courts and therapeutic approaches addressing the spectrum of social issues that can contribute to criminal activity and engagement with the child welfare system.

(2) The legislature further finds that by focusing on the specific individual's needs, providing treatment for the issues presented, and ensuring rapid and appropriate accountability for program violations, therapeutic courts and other therapeutic approaches may decrease recidivism, improve the safety of the community, and improve the life of the program participant and the lives of the participant's family members by decreasing the severity and frequency of the specific behavior addressed by the therapeutic court.

(3) The legislature recognizes the inherent authority of the judiciary under Article IV, section 1 of the state Constitution to establish therapeutic courts, and the outstanding contribution to the state and local communities made by the establishment of therapeutic courts and the use of other therapeutic approaches and desires to provide a general provision in statute acknowledging and encouraging the judiciary to provide for therapeutic court programs to address the particular needs within a given judicial jurisdiction.

(4) Therapeutic court programs may include, but are not limited to:

- (a) Adult drug court;
- (b) Juvenile drug court;
- (c) Family dependency treatment court or family drug court;
- (d) Mental health court, which may include participants with developmental disabilities;
- (e) DUI court;
- (f) Veterans treatment court;
- (g) Truancy court;
- (h) Domestic violence court;
- (i) Gambling court;
- (j) Community court;
- (k) Homeless court;
- (l) Treatment, responsibility, and accountability on campus (Back on TRAC) court;

(m) The use of peer support to coordinate the referral of persons to a coordinated care and support network.

Sec. 3 An Amendment to RCW 2.30.020 as follows:

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Coordinated support and care network," means a cooperative working relationship of stakeholders established in a defined geographic area to serve participants referred from the community, law enforcement, courts, jails, and probation departments in that geographic area.

~~(1)~~(2) "Emerging best practice" or "promising practice" means a program or practice that, based on statistical analyses or a well-established theory of change, shows potential for meeting the evidence-based or research-based criteria, which may include the use of a program that is evidence-based for outcomes other than those listed in this section.

~~(2)~~(3) "Evidence-based" means a program or practice that: (a) Has been tested in heterogeneous or intended populations with multiple randomized, or statistically controlled evaluations, or both; or one large multiple site randomized, or statistically controlled evaluation, or both, where the weight of the evidence from a systemic review demonstrates sustained improvements in at least one outcome; or (b) may be implemented with a set of procedures to allow successful replication in Washington and, when possible, is determined to be cost-beneficial.

~~(3)~~(4) "Government authority" means prosecutor or other representative initiating action leading to a proceeding in therapeutic court.

~~(4)~~(5) "Participant" means an accused person, offender, or respondent in the judicial proceeding.

~~(5)~~(6) "Research-based" means a program or practice that has been tested with a single randomized, or statistically controlled evaluation, or both, demonstrating sustained desirable outcomes; or where the weight of the evidence from a systemic review supports sustained outcomes as described in this subsection but does not meet the full criteria for evidence-based.

~~(6)~~(7) "Specialty court" and "therapeutic court" both mean a court utilizing a program or programs structured to achieve both a reduction in recidivism and an increase in the likelihood of rehabilitation, or to reduce child abuse and neglect, out-of-home placements of children, termination of parental rights, and substance abuse and mental health symptoms among parents or guardians and their children through continuous and intense judicially supervised treatment and the appropriate use of services, sanctions, and incentives.

(8) "Stakeholder" means any public or private entity or individual that provides services, funds, or goods related to housing, shelter, education, employment,

substance use disorder treatment and/or other behavioral health treatment, medical treatment, dental treatment, peer support, self-help, crisis care, income assistance, nutritional assistance, clothing, assistance with public benefits, financial management and other life skills education, and any other service or good that assists individuals to become self-sustaining and productive citizens thereby allowing them to achieve their maximum potential. A stakeholder is not required to provide services, funds, or goods to participants unless the participant is otherwise eligible for those goods or services.

(9) "Therapeutic approach" means the use of practices by a trial court that are consistent with RCW 2.30.010(2) but not performed in a specialty or therapeutic court.

~~(7)~~(10) "Therapeutic court personnel" means the staff of a therapeutic court including, but not limited to: Court and clerk personnel with therapeutic court duties, prosecuting attorneys, the attorney general or his or her representatives, defense counsel, monitoring personnel, and others acting within the scope of therapeutic court duties.

~~(8)~~(11) "Trial court" means a superior court authorized under this title or a district or municipal court authorized under Title 3 or 35 RCW.

Sec. 4 An Amendment to RCW 2.30.050 Courts authorized to work cooperatively.

Individual trial courts are authorized and encouraged to establish multijurisdictional partnerships and/or interlocal agreements under RCW ~~39.34.180~~ to enhance and expand the coverage area of the therapeutic court and to share coordinated support and care networks with other courts, law enforcement, jails, and probation departments using the Sequential Intercept Model or similar approach. Specifically, district and municipal courts may work cooperatively with each other and with the superior courts to identify and implement nontraditional case processing methods and resources which can eliminate traditional barriers that decrease judicial efficiency and that impair effective outcomes.

Sec. 5 NEW SECTION added to RCW 2.30 as follows:

Subject to the availability of amounts appropriated for this specific purpose, the Department of Social and Health Services, Department of Health, and the Washington State Board for Community and Technical Colleges shall cooperate with the Administrative Office of the Courts and the District and Municipal Court Judges Association to establish coordinated support and care networks throughout the state. Nothing herein requires any court of this state to use the services of a coordinated support and care network.

Sec. 6 NEW SECTION added to RCW 2.30 as follows:

Courts, probation departments, and peer navigators are not liable for the acts or omissions of stakeholders. Stakeholders are not liable for the acts or omissions of courts, probation departments, peer navigators, or other stakeholders.

Sec. 7 NEW SECTION added to RCW 2.30

Subject to the availability of amounts appropriated for this specific purpose, the state shall fund the use of peer support services by courts of limited jurisdiction if the court agrees to use an available coordinated support and care network. The peer support service provider shall be appointed by and serve at the pleasure of the local court or courts cooperating under RCW 2.30.050.

Sec. 8 An Amendment to RCW 3.50.020 as follows:

Jurisdiction.

The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. A hosting jurisdiction shall have exclusive original criminal and other jurisdiction as described in this section for all matters filed by a contracting city. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW ~~2.56.160~~ shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program. The court shall also have jurisdiction to the extent provided for in a cooperative agreement under RCW 2.30.050.

Sec. 9 An Amendment to RCW 3.66.060 as follows:

Criminal jurisdiction.

The district court shall have jurisdiction: (1) Concurrent with the superior court of all misdemeanors and gross misdemeanors committed in their respective counties and of all violations of city ordinances. It shall in no event impose a greater punishment than a fine of five thousand dollars, or imprisonment for one year in the county or city jail as the case may be, or both such fine and imprisonment, unless otherwise expressly provided by statute. It may suspend and revoke vehicle operators' licenses in the cases provided by law; (2) to sit as a committing magistrate and conduct preliminary hearings in cases provided by law; (3) concurrent with the superior court of a proceeding to keep the peace in their respective counties; (4) concurrent with the superior court of all violations under Title ~~77~~ RCW; (5) to hear and determine traffic infractions under chapter ~~46.03~~ RCW; and (6) to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by other courts of limited jurisdiction when those courts are participating in the program established under RCW ~~2.56.160~~. The court shall also have jurisdiction to the extent provided for in a cooperative agreement under RCW 2.30.050.

Sec. 10 An Amendment to RCW 2.08.010 as follows:

Original jurisdiction.

The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three hundred dollars,

and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce and for annulment of marriage, and for such special cases and proceedings as are not otherwise provided for; and shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court, and shall have the power of naturalization and to issue papers therefor. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued on legal holidays and nonjudicial days. The court shall also have jurisdiction to the extent provided for in a cooperative agreement under RCW 2.30.050.

Appendix B

ENCOURAGING EARLY THERAPEUTIC INTERVENTION FOR CERTAIN CRIMES

NEW SECTION added to RCW 10.22 as follows:

- (1) Any person accused of a non-traffic misdemeanor or gross misdemeanor may request a stay of proceedings for any pending charge or charges filed in a court of limited jurisdiction if the person accused of the crime:
 - a. Has not been afforded a previous opportunity for a stay of proceedings under this section;
 - b. Is not being accused of a domestic violence offense as defined in RCW 10.99.020(4);
 - c. Asserts that they are experiencing a behavioral health issue or issues that caused or contributed to the commission of the crime or crimes charged;
 - d. Produces an assessment from a licensed behavioral health professional which confirms that the person requesting the stay is experiencing a behavioral health issue or issues that caused or contributed to the commission of the crime or crimes charged and that the recommended treatment suggested is needed to prevent future criminal activity;
 - e. Agrees to comply with the treatment plan outlined by the licensed behavioral health professional;
 - f. Agrees that they will not commit any crime while the proceedings are stayed;
 - g. Agrees that their right to a speedy trial is tolled;
 - h. Agrees to waive their right to a jury trial, right to hear and question witnesses who testify against them, the right to testify, and the right to offer witnesses and other evidence on their own behalf;
 - i. Admits that there are sufficient facts in the record to convict them of the crime or crimes charged;
 - j. Agrees that a guilty finding will be entered by the court for the crime or crimes charged if the stay of proceedings is revoked by the court pursuant to (4) of this Section.
- (2) The court shall grant a stay of proceedings for up to 24 months if the court finds that all of the requirements of Section 1 are met.
- (3) The shall be dismissed with prejudice if at the end of the stay entered by the court pursuant to (2) of this Section if:
 - a. There has been no finding by the court of probable cause for further criminal activity during the period of the stay; and,
 - b. Proof of successful completion of the treatment program outlined in 1(c) of this Section has been filed with the court.
- (4) The stay shall be lifted and a guilty finding will be entered as provided in 1(j) of this Section if:
 - a. The court finds probable cause that the person subject to the stay engaged in further criminal activity; or,
 - b. If the treatment program outlined in 1(d) of this Section was terminated due to the willful failure to comply with the conditions of treatment. Provided, that the stay will not be lifted if there are relapses or violations of treatment that the treatment provider believes can be addressed as part of the normal recovery and treatment process.
- (5) Any person convicted under (4) of this Section may be sentenced by the court and placed on probation in the same manner as any other conviction for the same crime.

The stay of proceeding does not shorten the time period available to the court for probation.

- (6) The Administrative Office of the Courts shall provide for a method of tracking this type of disposition distinct from all other stays, dismissals, and guilty findings. Furthermore, any case that results in dismissal after a successful stay under this Section shall be sealed and shall not be subject to public disclosure.
- (7) A dismissal after a successful stay shall not be recorded or kept as non-conviction data under RCW 10.97.030(8) and shall not be reported to anyone as part of a criminal background check.

Appendix C

Justice Involved
Therapeutic Intervention
(JITI)

by
Judge David A. Larson
Federal Way Municipal Court

1. Introduction

The positions taken in this paper are the author's alone and are not endorsed by any other individual or group.

The purpose of this white paper is to advocate for state resources to support the effective use of courts of limited jurisdiction in coordination with needed services to fulfill the intent and purpose of the Sequential Intercept Model.

District Courts and Municipal Courts have jurisdiction over and handle the same types of criminal cases; misdemeanors and gross misdemeanors. Therefore, any reference to the handling of criminal cases in Municipal Courts applies equally to District Courts, and vice versa. However, there is a statutory inequality in behavioral health resource funding for these courts that will be discussed below.¹

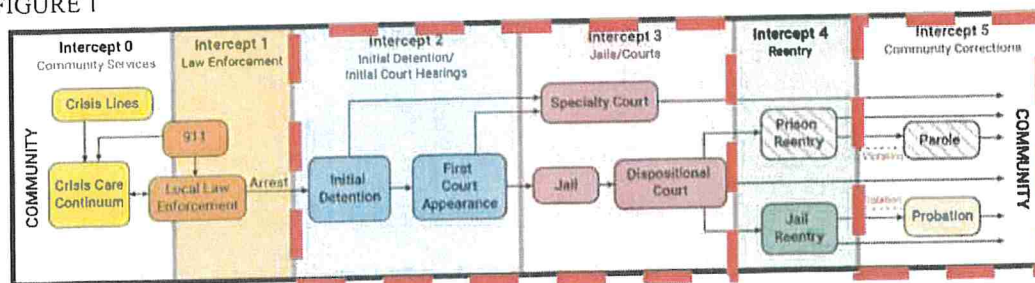
2. What is the Sequential Intercept Model?

According to the publication, *Using the Sequential Intercept Model to Guide Local Reform*, October 2018, the Sequential Intercept Model refers to a stepped process for addressing behavioral health issues in the different stages of the criminal justice system. There are currently six recognized intercepts in the Sequential Intercept Model. "Each intercept functions as a filter; ideally, interventions would be front-loaded to 'intercept' people early in the system." *Id* at p. 2.

- Intercept 0 – Community Services
- Intercept 1 – Law Enforcement
- Intercept 2 – Initial Detention/Initial Court Hearings
- Intercept 3 – Jails/Courts
- Intercept 4 – Reentry
- Intercept 5 – Community Corrections

Superior courts and courts of limited jurisdiction play a significant role in Intercepts 2 and 3. Courts of limited jurisdiction play a significant role in Intercept 5 because probation is an arm of the court under [ARLJ 11](#), but not all courts of limited jurisdiction have probation departments. Superior courts can use the Department of Corrections for misdemeanor probation, but such services must be separately contracted for with DOC by each jurisdiction. [RCW 9.95.204](#).

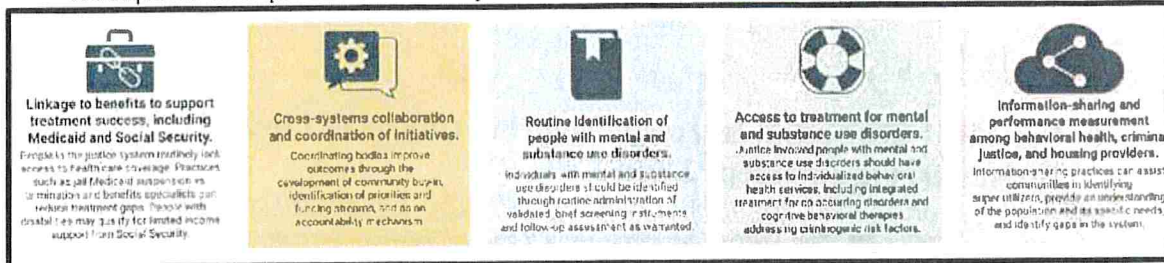
FIGURE 1



¹ See discussion in Section 8.

There are identified best practices for all five intercepts that are depicted in the illustration below:

The Sequential Intercept Model Source: Policy Research Associates, Inc., <https://www.prainc.com/sim/>



A good way to digest a volume of additional information on the Sequential Intercept Model quickly is to review materials on the website of [Policy Research Associates](https://www.prainc.com/), the provider of Sequential Intercept Mapping (SIM), including a [one page summary](#), a [brochure](#), a [training brochure](#), [next steps](#), and a [slide show](#).

3. Can courts of limited jurisdiction be effective implementing Intercepts 2, 3, and 5?

In its 2015 report entitled, [Municipal Courts: An Effective Tool for Diverting People with Mental and Substance Use Disorders from the Criminal Justice System](#), the Substance Abuse and Mental Health Services Administration (SAMHSA) noted that:

"Municipal courts make a good potential vehicle for diverting people with mental and substance use disorders for several reasons, including volume of cases; high prevalence of mental and substance use disorders among those appearing before municipal courts; the risk of increased jail time for arrestees with mental illness, most with co-occurring substance use disorders; and perceptions of community risk based on offense type."

Id. at p. 3. SAMSHA concluded:

"Municipal courts that implement these four essential elements—Identification and Screening, Court Based Clinician, Recovery-Based Engagement, and Proportional Response—are in the position to minimize the criminal justice system involvement and reduce unnecessary incarceration of people with mental illness and co-occurring substance use disorders as well as facilitate engagement or re-engagement in mental health and substance use disorder services. Municipal courts provide an enormous opportunity to fill a gap in diversion strategies at Intercepts 2 and 3 of the Sequential Intercept Model. In the aggregate they are, by far, the primary case resolution forum in the United States. The individuals who enter municipal court fit the profile of a population that might benefit most from diversion: individuals with mental and substance use disorders, frequently arrested for minor offenses, living in communities with few behavioral health services, and at high risk for homelessness and

unemployment. While there are challenges, there are a number of examples in different parts of the country that illustrate how municipal courts can in fact become an essential part of the landscape as efforts at diversion move forward."

Id. at p. 12.

4. Use of the Sequential Intercept Model in Courts of Limited Jurisdiction in Intercept 2 and 3

In its 2015 report entitled, *Municipal Courts: An Effective Tool for Diverting People with Mental and Substance Use Disorders from the Criminal Justice System*, the Substance Abuse and Mental Health Services Administration (SAMHSA) stated the following in its introduction:

"Mental health courts, drug courts, and other treatment courts have become an increasingly common part of the judicial landscape and define much of the conversation at Intercept 3. Reentry from jail or prison, Intercept 4, has become a core topic in general discussions regarding correctional policies at the federal, state, and local levels. SAMHSA's SSI/SSDI Outreach, Access and Recovery) (Dennis & Abreu, 2010) ease reentry on release from jail or prison. And while many communities lack much in the way of resources at Intercept 5, a literature has emerged that discusses specialized probation as a strategy to ensure longer community tenure (Skeem & Manchak, 2008).

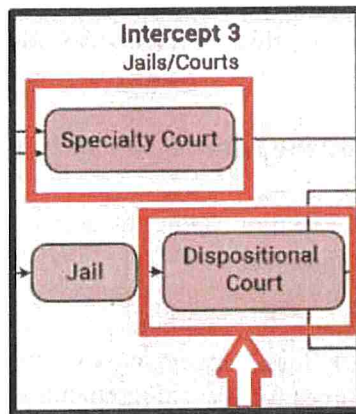
While each intercept presents opportunities for diversion, Intercept 2 may hold the most unexplored potential. This is because it is at Intercept 2 (initial detention and first court appearance) that the vast majority of individuals who come into contact with the criminal justice system appear. Many of these individuals have a mental illness and co-occurring substance use disorders; these are the individuals whom communities often try to divert. *However, for a variety of reasons discussed below, this intercept is often overlooked.* The purpose of this document is to turn community attention to the possibilities that Intercept 2, especially when the first appearance is at a municipal court, presents for diversion. *The optimal diversion strategies that are most often overlooked and involve municipal courts are at first appearance (Intercept 2).*"

(Emphasis added)

In 2015, the Legislature expressed a clear intent to support the judicial branch's efforts to establish therapeutic courts under RCW 2.30.010, but such courts are part of Intercept 3, not Intercept 2. Nevertheless, early intervention with coordinated services in Intercept 2

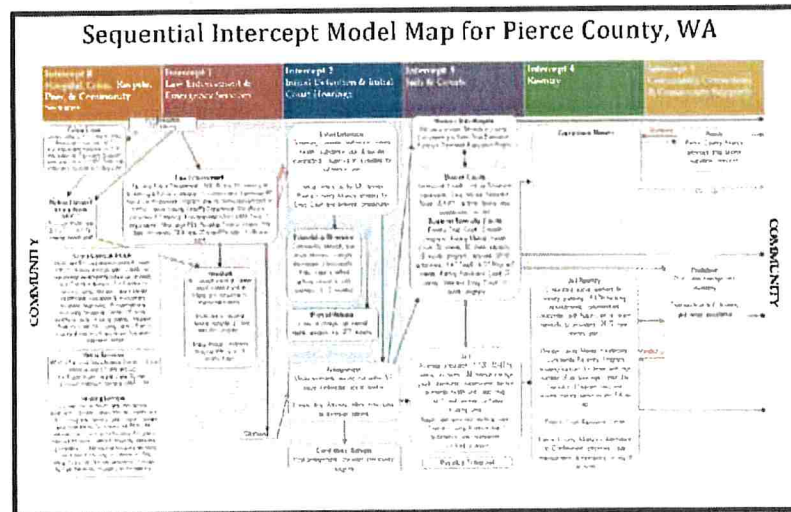
is still a best practice. The observation of the necessity for early intervention and treatment in Intercept 2 is also consistent with Chapter 4 of *Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health*.

In addition, as can be seen in the graphic below, Intercept 3 includes disposition of cases in therapeutic courts and in traditional courts, yet there seems to be a belief by many that only therapeutic courts should use therapeutic intervention techniques. However, failing to use therapeutic intervention in Intercept 3 for all qualifying cases actually defeats the purpose of the Sequential Intercept Model because it delays therapeutic intervention until the affected individual qualifies for a therapeutic court. This partial approach to Intercept 3 also fails to recognize the fact that many jurisdictions cannot justify a therapeutic court yet still need to address the same behavioral health issues.



5. What is best practice for implementing the use of the Sequential Intercept Model?

The implementation of the Sequential Intercept Model requires an ambitious effort through what is called Sequential Intercept Mapping (SIM). Currently, each community is expected to take the initiative on its own to develop coordination of the six intercepts. Pierce County's 2018 *Sequential Intercept Model Mapping Report* is a good example of the effort taken to compile the data necessary to determine the community's ability to respond in a coordinated manner.



6. What is the status of the use of the Sequential Intercept Model?

Some communities have done better than others have when it comes to organizing services with the criminal justice system, but most communities across the state have not engaged in the analysis for reasons ranging from the lack of political will to the lack of funding and resources. We have some shining examples of what well-funded courts look like, but we have many more courts that are not well funded, and countless examples of other courts that do not even want to venture into the therapeutic realm because of the daunting task of organizing services and funding such intervention.

In addition, each of the stakeholders that serve the various intercepts has traditionally operated independently of each other with little or no coordination. This makes the breaking down of traditional silos a challenge. The result; although we have good examples of best practice in the state, we have what can best be described as a patchwork of partial behavioral health solutions that cannot be reasonably tied to a statewide or region specific strategy.

7. What is the net effect of the failure to use the Sequential Intercept Model?

Without early and continued intervention, addiction and untreated behavioral health issues can lead to a cycle of criminal behavior that affects the individual through a predictable cycle of criminal charges, warrants, incarceration, lost housing, lost employment, and other significant individual impacts. Entire communities and regions are also affected through property loss, damage, costly medical intervention, and the overtaxing of government resources for law enforcement, jails, and courts.

Misdemeanors and gross misdemeanors are not “low-level offenses” or “just misdemeanors” because convictions for these offenses can have long-term adverse impacts to employment, education opportunities, and other life success for the person charged. Taking the first offense seriously will help countless people and communities in the long term if an attempt is made to intervene the first time someone is charged with a crime commonly associated with addiction and untreated behavioral health issues.

Courts of limited jurisdiction currently have the ability to impose treatment and other requirements that are focused on getting control of the behavioral health issues as part of sentencing. However, there needs to be a “nexus” between the condition imposed and the crime committed. Treatment cannot be imposed as a condition of sentence if there is no attempt to screen people for such behavioral health issues before sentencing. In addition, the failure rate for treatment conditions are contributed to by the absence of any coordinated hand-off from the court to behavioral health professionals.

8. Is there equal access to funding for counties and cities?

RCW 2.30.040 does not make a distinction between a county and a city seeking funding for therapeutic courts. However, RCW 82.14.460 only allows counties to collect and use a .1% sales tax for behavioral health treatment and therapeutic courts. An exception was codified in 2010 that allowed cities with populations of over 30,000 people to impose the tax, but only if that county had not already imposed the tax.

In King County alone, there are eight cities with populations greater than the populations of eighteen counties. Twenty-seven of the thirty-nine counties have populations that are less than the populations of individual suburban cities like Federal Way, Kent, Renton, and Kirkland. These four cities operate municipal courts that handled a combined 10,959 criminal case filings in 2018, yet cannot collect or use any sales tax generated by RCW 82.14.460 to address the same behavioral health issues that counties face.²

9. Why do courts of limited jurisdiction need state financial support?

The lack of resources results in countless lost opportunities to identify “the specific individual's needs,”³ and provide “treatment for the issues presented”⁴ for first time justice-involved individuals and other justice-involved individuals suffering from behavioral health issues.

Washington State's court structure properly allows each community to meet its criminal justice needs through local control, accountability, and flexibility. Counties and cities across the state have fulfilled their statutory duties to provide for courts to address crimes that occur within respective jurisdictional boundaries. However, in recent years the counties and cities of this state have been confronted with a common crisis in criminal justice that knows no jurisdictional boundaries. This means that local impacts have become regional and statewide impacts.

However, as stated in *Municipal Courts: An Effective Tool for Diverting People with Mental and Substance Use Disorders from the Criminal Justice System*, the common denominator for all courts is the need for the following resources so that courts of limited jurisdiction can properly intervene in behavioral health issues:

1. Identification and Screening;
2. Court Based Clinician;
3. Recovery-Based Engagement; and,
4. Proportional Response.

The majority of the courts of limited jurisdiction do not have these four resources available to them and are not able to follow best practice due to lack of those resources at the local level.

Many communities, and the courts that serve them, also do not have adequate resources to establish a therapeutic court in compliance with RCW 2.30.030. Therefore, due to the absence of any intermediate alternative, most courts of limited jurisdiction are not able to use any type of coordinated therapeutic approach for early intervention or for cases that are not eligible for a therapeutic court.

² King County collects \$138,000,000 dollars per biennium from this tax and King County cities with municipal courts receive none of that money.

³ RCW 2.30.010(2)

⁴ RCW 2.30.010(2)

Without outside financial support, local communities cannot afford to adequately address the behavioral health issues that are causing individual suffering and adverse community impacts. The current lack of outside support actually fuels a financial incentive to impose a minimal sentence that does nothing to address the underlying cause of criminal behavior. Local jurisdictions without resources are left with nothing more than hope that the affected person will get needed help in another jurisdiction with more resources.

In addition, a coordinated community-based approach that maximizes the use of resources is more likely if communities have access to Sequential Intercept Mapping. This coordinated approach will then allow all courts and communities the opportunity to address underlying causes before and, if needed, after the condition or criminal behavior gets out of control. Organizing and maximizing existing resources and providing missing resources will ultimately make it easier for local courts to use therapeutic intervention in all applicable Intercepts; 2, 3 and 5.

10. Conclusion

Reasonable minds can differ about what type of judicial intervention is most effective and the needs of communities will vary, but the common denominator is that courts need state funding for resources that allow for the proper use of therapeutic techniques throughout all intercepts or approaches.

1. Examples of resources that are universally useful in all intercepts include:
 - a. Sequential Intercept Mapping services;
 - b. Training for court personnel, attorneys, judges, and probation;
 - c. Proper uniform screening tools;
 - d. Immediate onsite evaluations with court-based clinicians;
 - e. Peer navigators to be used for "warm hand-offs";
 - f. Case managers;
 - g. Court coordinators;
 - h. Social workers.

Courts could also be encouraged to share resources under RCW 2.30.050.

Example: One court-based clinician could be available at different courts on different days.

2. Intercept 2: Increase the availability and use of crisis centers that could be used in conjunction with court pre-trial release programs and catch and release programs authorized by courts;
3. Intercept 4: Currently, federal and state law provides that medical insurance be suspended when someone goes to jail. We need to amend the law to provide an exception that allows government entities and private treatment agencies to form public/private partnerships for therapeutic detention centers. The same insurance carrier that would cover the treatment if the justice-involved individual were out of custody could then pay for treatment if it is offered in an approved specialty detention center. There could also be attempts to inspire the philanthropic

community to help fund specialty detention centers that would be more like hospitals that someone cannot leave than a jail that provides treatment;

4. Intercept 5: Provide for better coordination of probation services among jurisdictions so affected individuals with multiple cases can be monitored in one probation department that reports to multiple courts. Specialty behavioral health probation units could be formed to serve a consortium of cities and counties;
5. Intercept 5: Use of the two-year college system for referrals of justice-involved individuals from courts can be beneficial for education, training, and employment, but such referrals could be used for the dual purpose of providing a clinical experience for students seeking a career in social services or behavioral health. The clinical experience could also be offered in the court setting in coordination with the schools, treatment providers, and/or social workers.
 - a. Retailers could also collaborate with the college system to provide needed education regarding the impacts of retail theft and other crimes.

