

## The Seattle Medium

### County Council Approves Legislation To Restrict Pre-Trial Release

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An ordinance that many believe will disproportionately affect low-income people and persons of color in the penal system was passed into law on Monday by a 7-2 vote of the King County Council -- only Council Chair Larry Gossett and Council Member Kathy Lambert voted against.

The ordinance (2011-0205), proposed by Councilmember Bob Ferguson, states that any pre-trial individual convicted of or charged with a violent offence, sex offence or domestic violence offence within the last ten years will not be eligible for Community Corrections Alternative Programs [CCAP] basic or enhanced, unless they can post bail. Critics believe that this measure will disproportionately impact poor people and people of color.

In the 1990s, in order to quell the criminal justice department's increasingly expansive financial burden on the County's general budget, the Council instituted CCAP basic and enhanced, according to Larry Evans, legislative aide to King County Councilmember Larry Gossett. In CCAP basic, pre-trial individuals are required to report in everyday and may be subject to urine testing. In CCAP enhanced individuals are required to undergo Drug and Alcohol treatment, domestic violence treatment, employment assistance, or education classes, based on their observed needs.

CCAP allows individuals to spend their pre-trial period outside of jail. Advocates maintain that while in CCAP, pre-trial individuals are able to keep their jobs and retain some measure of normalcy in their lives. Kimberley Exe, Felony Supervisor for Society of Counsel Representing Accused Persons, believes that CCAP programs are positive and keep our clients engaged in community. CCAP is the best because it helps clients to improve their lives and enhances public safety.

According to Evans, the CCAP program has been successful. Evans says the recidivism rate of people in CCAP (30%) is much lower than people who are warehoused in jail while awaiting trial (67%).

Councilmember Kathy Lambert agrees.

CCAP program has done many wonderful things, says Councilmember Kathy Lambert.

Lambert believes that without the option of CCAP, the criminal justice system will become more broken and increasingly disproportionate, thus making unequal justice.

However, on Monday, the council adopted an amended version of the ordinance proposed by Councilman Joe McDermott, which provides that aside from jail, the only other available option will be CCAP enhanced for this specific subset of pre-trial individuals. CCAP basic is no longer an available option, which Councilmember Patterson thinks is suitable because the basic program is not enough to help the individuals with problems.

The ordinance, co-sponsored by Councilmember Jane Hague, Chair and member of the Law, Justice, Health and Human Services Committee respectively, was in response to Maurice Clemmons, an African-American male who shot and killed four police officers in Parkland, Washington while out on bail. Interestingly enough, as Administrative Law Judge Nicole Gaines pointed out, this ordinance would have no effect on Clemmons, for he was able to post bail at \$150,000.

Community leaders and members alike believe that this new law will disproportionately affect people of color and low-income citizens. Twenty-two of these leaders and members brought testimony to the hearing in council chambers to speak out against passing the ordinance. Community members believe that this ordinance goes against equality and social justice, and hinders public safety.

◆ From a Civil Rights standpoint, ◆ begins George Pieper, Chair of the King County Civil Rights Commission, ◆ if the legislation moves forward, lower income people and people of color are to be the most affected, especially because of the disproportionate prison system population. If we move to a system where judges don't have the ability to determine if someone is able to be rehabilitated outside the system, it puts folks at a disadvantage. ◆

As it stands, African-Americans make up 5% of King County population, but 40% of the incarcerated population, offers Evans.

Since poor people are less likely to afford bail than non-poor people, there will be different justice for different people, says Councilmember Lambert.

Lisa Daugaard, Deputy Director at the Defender Association, also believes that bail is a harsh tool which falls disproportionately on poor people, given that they are not equally able to post bail as those in the socioeconomic position to do so.

Evans agrees that this ordinance will increase the number of poor people in jail, as poor people are less likely to have enough money or assets to bail out.

The (amended) ordinance will remain in effect for approximately 2 years, until a Pre-Trial Risk Assessment tool is developed. According to Evans, ◆ this tool will be a 3 page form asking questions in different categories, such as housing, employment, education, previous criminal justice involvement, community connections and community support. This document is supposed to be a predictor of whether a person will fail to come to court, fail urine analysis or commit another crime. ◆

Yet, critics believe that the ordinance is unnecessary and may limit a judge's ability to consider the needs and circumstance of defendants individually.

Before the ordinance, an individual's eligibility for CCAP was solely at the judge's discretion. Judges can see the characteristics of the person standing in front of them regardless of his or her risk assessment score, says Evans.

◆ We need to continue to protect our judges' ability to use judicial discretion in these pretrial cases, where the needs of individual cases can be properly evaluated, ◆ said Lambert. ◆ Judges need these various tools to help people address their underlying problems in order to help break the cycle of crime. ◆

Judge Nicole Gaines says that, ◆ King County judges have the ability and education needed to judge the people in front of them. ◆ Removing this discretionary power from the judges implies ◆ that they are not smart enough to judge if someone should be released, ◆ she says.

Community members firmly believe that CCAP is the better alternative to warehousing. In his testimony at the hearing, Law Professor at Seattle University, Robert Chang expressed that individuals were more likely to be convicted if they were warehoused during the pre-trial period (78%) than people who were allowed to spend their pre-trial period outside of prison (60%).

◆ By putting this restriction on pre-trial individuals, innocent people may be going to jail unnecessarily, ◆ states Evans. ◆ The concept of ◆ innocent until proven guilty ◆ and ◆ equality and social justice ◆ are completely turned on their heads. I haven't encountered any legislation that's more counter to equality and social justice than this one.

Public Defender and member of the Race and Criminal Justice Task Force, Karen Murray asks, why get rid of something that has worked? My biggest fear is of the unintended consequences it will have on the people of color and poor people unable to post bail. They will lose their jobs and come out of treatment programs and schooling.

Still, the initial sponsor of this ordinance, Councilmember Bob Ferguson stands steadfast. According to Ferguson, there is not sufficient data to suggest the impact CCAP has on people, and the pre-trial release system is in need of reform. Ferguson also maintains that [the ordinance] is only a temporary restriction that will affect 1-2% of the people who use the program.

By establishing common-sense guidelines to determine who is eligible to be released through this program, the Council is taking a step toward setting responsible policies for how these discretionary programs should be used, said Councilmember Ferguson in a statement released after the hearing.

Despite the removal of the harshest parts of the proposal, Council Chair Gossett is still uneasy about the passage of the amended ordinance.

I'm still concerned the idea behind the original legislation defies the Council's commitment to the principles of equity and social justice that are part of the King County Strategic Plan, says Gossett. A two-tier justice system that punishes defendants for being poor is a step back, not a step forward.

Individuals who can benefit from the services available in our alternatives to incarceration programs while awaiting trial would have had to sit in jail at a cost to the taxpayer. Meanwhile, a much larger percentage of detainees, some with more serious charges, can continue to bail/bond out without therapeutic services or supervision, added Gossett. Even amended, this proposal was a simplistic solution for an issue our own research shows isn't a problem.