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Ferguson, county judges at odds over pretrial option to jail

King County Councilmember Bob Ferguson wants to keep pretrial defendants with violent histories from being released into alternative-to-jail programs. Judges object because they will lose discretion over individual cases.

By Bob Young

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Anthony M. Carlson already had a robbery conviction when he was charged with another robbery — allegedly driving a man to a Federal Way field, stripping him of his jewelry and clothes and beating him.

While Carlson awaited trial, King County Superior Court Judge Brian Gain released him from jail in late 2009 and ordered him into community corrections, a pretrial alternative. Community corrections often includes education, work training and substance-abuse or mental-health services.

Carlson, 16 but charged as an adult, failed to comply with the conditions of his release. He was charged in 2010 with another robbery, allegedly threatening a man with a knife, stepping on his throat and stealing his cellphone.

Later in the same month, Carlson was charged with yet another robbery — his second while in community corrections.

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King County Councilmember Bob Ferguson wants to keep pretrial defendants with violent histories such as Carlson's from being released into community corrections. Judges object because they will lose discretion over individual cases.

Ferguson, who chairs the council's law and justice committee and is running for state attorney general, acknowledges that alternatives to incarceration work well most of the time. The programs spare defendants charged with nonviolent crimes from costly stays in jail.

Ferguson's proposal would affect about 1 percent of the roughly 1,000 pretrial defendants ordered annually by King County into alternatives to jail. Those defendants already have a violent-crime conviction at the time they are charged with new violent crimes and released into community corrections.

"Community corrections was never intended for people with serious violent convictions," Ferguson said.

The council analyzed 18 months of data and found just 15 defendants who would have been barred from community corrections by Ferguson's proposal. Ferguson has since widened his proposal to also prohibit defendants charged with serious domestic-violence crimes.

The King County Superior Court "strongly opposes" Ferguson's proposal, according to a letter from Presiding Judge Richard McDermott.

Judges are required to consider multiple factors, McDermott argued, and use their discretion in deciding a defendant's status before a trial. Typically, judges have three choices: set bail, release defendants on personal recognizance, or order them to community corrections alternatives.

In his letter, McDermott, who did not respond to a request for an interview, said depriving some defendants of community-corrections services would increase their chance of re-offending. He also said it could increase jail populations and county expenses, and could have a "disparate" impact on economic and racial minorities.

"Those who are financially able will post bail and be released," he wrote. Poor people who might have been ordered to work release would instead languish in jail, adversely affecting their ability to pay bills and restitution to victims.

Ferguson's plan also would shift critical decisions on pretrial release from judges to prosecutors, McDermott stressed, because defendants could be barred from community corrections based on charges prosecutors filed against them.

And, as Superior Court Judge Ronald Kessler noted, those charges don't always hold up. Fifteen percent of the felony cases filed in King County last year were later dismissed at the request of prosecutors because of insufficient evidence, Kessler told County Council members at a recent meeting.

Ferguson said his proposal is not related to his campaign for attorney general. He said he first suggested restrictions last year "long before" he announced his run. It's also his job as head of the council's law and justice committee to protect public safety.

Ferguson's council colleague, Reagan Dunn, is also running for attorney general. A former federal prosecutor, Dunn is a Republican; Ferguson is a Democrat.

The King County Prosecutors' Office is staying neutral in the debate, according to Deputy Chief

of Staff Ian Goodhew. "We're the county's lawyers and want to remain neutral so we can provide advice to all our clients" including the council, the court and the county executive, Goodhew said.

Ferguson's proposal is not intended to be permanent. He wants to impose the restrictions until the county develops new software for assessing the risk of releasing defendant; that is expected to take two years.

Ferguson expects to hold a committee vote on his proposal soon.

Councilmember Larry Gossett has sounded the most skeptical of Ferguson's legislation. "I think our judges are doing an excellent job," Gossett said.

He also stressed that judges have "overwhelmingly" kept defendants with violent records from community corrections.

"But there are some cases alarming to me," Ferguson said. "I say that as a lawyer with utmost respect for our judicial process. I think it would be troubling to the average citizen to know these folks are eligible, with their backgrounds, to be released when they don't make bail."

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