

MIDD Briefing Paper

BP 85 Diversion and Alternative Sentencing Pilot Program

Existing MIDD Program/Strategy Review MIDD I Strategy Number _____ (Attach MIDD I pages)
New Concept (Attach New Concept Form)

Type of category: New Concept

Summary: The Diversion and Alternative Sentencing pilot program is a *pre-trial diversion* program for individuals charged with eligible misdemeanors in any participating jurisdiction within King County (including unincorporated King County) and an *alternative sentencing program* for individuals charged with eligible felony offenses in King County Superior Court. The intent of the program is to provide wraparound services and a Housing First model¹ for court participants with behavioral health disorders who would be more appropriately served by housing and integrated services rather than incarceration. The ultimate goal of the program is to reduce recidivism rates, reduce utilization of criminal justice resources in these cases, and meaningfully support re-entry to the community following incarceration by connecting individuals to critical services necessary for achieving and maintaining stability.

Collaborators:

Name	Department
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Subject Matter Experts and/or Stakeholders consulted for Briefing Paper preparation. List below.

Name	Role	Organization
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The following questions are intended to develop and build on information provided in the New Concept Form or gather information about existing MIDD strategies/programs.

A. Description

- 1. Please describe the New Concept or Existing MIDD Strategy/Program: Please be concise, clear, and specific. What is being provided to whom, under what circumstances? What are the New Concept Existing MIDD Strategy/Program goals? For New Concepts, does it relate to an existing MIDD strategy? If so, how?**

The Diversion and Alternative Sentencing pilot program is a *pre-trial diversion* program for individuals charged with eligible misdemeanors in any participating jurisdiction within King County (including unincorporated King County) and an *alternative sentencing program* for individuals charged with eligible

¹ http://www.endhomelessness.org/pages/housing_first.

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felony offenses in King County Superior Court. The intent of the program is to provide wraparound services and a Housing First model² for court participants with behavioral health disorders who would be more appropriately served by housing and integrated services rather than incarceration. The ultimate goal of the program is to reduce recidivism rates, reduce utilization of criminal justice resources in these cases, and meaningfully support re-entry to the community following incarceration by connecting individuals to critical services necessary for achieving and maintaining stability.

The proposed program is modeled after the “Diversion & Alternative Sentencing Pilot Program” in Los Angeles County (LA), California that launched in September 2014. Key stakeholders in LA County have agreed to act as a resource and assist in the development and implementation of a similar program in King County.

The proposed pilot program creates a separate track within the King County criminal justice system to identify and divert adults charged with misdemeanor or felony offenses who are otherwise ineligible for rehabilitative programs such as Law Enforcement Assisted Diversion (LEAD)³, the Downtown Emergency Services Center’s Crisis Solutions Center (CSC)⁴, or therapeutic court options due to their criminal history or eligibility restrictions. This population is more likely to experience chronic homelessness and unemployment, and lack social support or access to services within the community. As a result, these individuals spend more time in jail, and their cases tend to take longer to resolve due to their behavioral health needs, resulting in increased criminal justice costs.

Eligibility for the pilot program may be determined at any time throughout the life of a criminal case, requiring cooperation among stakeholders within the criminal justice community. Potentially eligible individuals can be identified at any time after they are booked into jail by corrections staff, jail health staff, or court personnel (i.e., attorneys, judges). For example, an individual with a behavioral health disorder who is arrested may be flagged as a candidate for the program at the time of booking. Or, once charged, a defense attorney may determine that their client meets the criteria and petition the court to participate in the program. There would be different criteria depending upon whether an individual is charged with a misdemeanor or a felony offense.

With eligible misdemeanor cases, court participants avoid a conviction by complying with terms of pre-trial release with the promise of dismissal of charges upon successful completion. With eligible felony cases, court participants may also be eligible to avoid conviction and have their charges dismissed upon successful completion of the program; however, depending on decisions made during program development involving applicable stakeholders, individuals may be required to enter into a plea of guilty to an amended/reduced (misdemeanor) charge, which may include conditions of probation. In either case, subsequent to opting into the program, a mental health professional (MHP) and/or a chemical dependency professional (CDP), or dually credentialed professional, will assess the individual and work with the defense attorney to make a recommendation to the court to divert the case into the proposed program. If approved, the court participant is assigned a care coordinator who will complete a needs assessment and work with the court participant within the community to access needed services, including treatment, case management, housing, and medical care. Once an individual formally opts into the program, they are then connected with wrap-around services and supports to help them manage their transition back into the community and access needed services. The level of engagement

² http://www.endhomelessness.org/pages/housing_first.

³ <http://leadkingcounty.org/>.

⁴ http://www.desc.org/crisis_solutions.html.

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will vary according to an individual participant's diagnoses, prior criminal history, prior involvement with treatment programs, and the nature of the current charge(s).

The program track for individuals with eligible misdemeanor offenses will extend for 90 calendar days with the option for the individual to continue in the program in order to secure permanent supportive housing (if the individual was homeless at the time of referral). Individuals may be screened and offered an opportunity to participate before charges are filed or a plea entered, and those that successfully complete all program requirements within the 90-day program period will have their misdemeanor charges dismissed. Participants will be required to remain in the program for 90 days unless their identified program goals are achieved sooner. If the court participant fails to comply with the program requirements, their case will proceed to filing and arraignment for further proceedings on the original charge or they will return to court for reinstatement.

The program track for individuals booked into jail on felony offenses would require longer program participation. Due to the operation of the Washington State Sentencing Guidelines for felony convictions, the prosecutor would agree to amend the eligible felony charge to a misdemeanor offense in order to facilitate the individual's participation in the proposed program. In these "felony drop-down" cases, the required participation period in the program would be 18 months. If the court participant complies with all the requirements, then the reduced misdemeanor charges may be dismissed entirely or a lesser sentence may be imposed depending on program development decisions prior to implementation. Individuals will be required to remain in the program for 18 months, unless their identified program goals are achieved sooner, or they return to court for a violation hearing.

Pilot program participants would receive services from a multidisciplinary team that includes: mental health and substance use disorder (SUD) treatment providers; case managers; prescribers; and peer support advocates. Supportive services would include: housing and housing support services; comprehensive assessment for physical health, mental health, and SUD needs; group and individual counseling; medication management; 24-hour access to dedicated crisis response services; intensive case management; assistance with obtaining or re-establishing benefits and entitlements; recovery-based support groups and peer support services; and employment/vocational services. Individuals experiencing homelessness, or who are unstably housed in environments that contribute to criminal justice involvement, would be provided immediate access to emergency housing and assisted in obtaining permanent housing throughout the course of their program engagement. The goal is to connect these individuals with services and support within their own community rather than attempting to address these issues while in jail or through the court system.

2. Please identify which of the MIDD II Framework's four Strategy Areas best fits this New Concept/Existing MIDD Strategy/Program area (Select all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Crisis Diversion | <input type="checkbox"/> Prevention and Early Intervention |
| <input checked="" type="checkbox"/> Recovery and Re-entry | <input checked="" type="checkbox"/> System Improvements |

Please describe the basis for the determination(s).

Individuals would be diverted out of the criminal justice system, after jail booking, with services and support wrapped around them to help manage the transition (re-entry) to the community. Rather than continuing the cycle of jail, fines that are unaffordable, and intensive in-court supervision, this pilot program aims to support participants with services and resources within their own communities in order to foster a safe and stable environment for participants to continue with their recovery efforts. Providing additional resources and supports to address behavioral health needs early in the continuum

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of criminal justice engagement reduces the burden on an already over-burdened criminal justice system. This, in turn, will reduce the likelihood of re-offense, avoiding future or multiple engagements with the criminal justice system (system improvements).

B. Need; Emerging, Promising, Best, or Evidence Based Practices; Outcomes

- 1. Please describe the Community Need, Problem, or Opportunity that the New Concept Existing MIDD Strategy/Program addresses: What unmet mental health/substance use related need for what group or what system/service enhancement will be addressed by this New Concept/Existing MIDD Strategy/Program? What service gap/unmet need will be created for whom if this New Concept Existing MIDD Strategy/Program is *not* implemented? Provide specific examples and supporting data if available.**

Individuals who struggle with untreated mental health and/or SUDs are at high risk of arrest and becoming caught up in the criminal justice system due to behaviors related to these behavioral health disorders. Lacking access to appropriate services and supports, these individuals often fall into a cycle of arrest, incarceration, conviction, and release back into the community without the tools or resources to help them avoid repeating the cycle. Most of these individuals, once arrested, are typically unable to post bail due to their lack of financial resources.⁵

Currently, short of arrest, there are limited options available to law enforcement when they encounter an individual with behavioral health needs, and those services that do exist often have exclusionary criteria related to current offense and criminal history that keep many individuals from being able to access alternative programs. These individuals continue to cycle through jails without getting connected to appropriate services or supports to assist them in connecting with, and maintaining participation in, these services in the community. This program would allow for increased access to therapeutically appropriate services for individuals who are ineligible for pre-booking diversion, or for whom the option for diversion may not have been considered prior to booking by the law enforcement officer, based on a variety of factors, including prior experience and knowledge of the individual and/or the circumstances of the arrest.

Once incarcerated, these individuals tend to deteriorate further, making re-entry all the more challenging once these individuals are finally released back into the community. Additionally, once booked into jail, individuals with behavioral health disorders spend, on average, longer periods in custody than individuals without these same disorders. Persistent and untreated behavioral health and substance abuse issues complicate and prolong the resolution of these cases, increasing costs to the judicial system and to the individuals themselves⁶. For these individuals, any period of incarceration tends to have negative impacts: disruption of treatment progress, exacerbation of symptoms, and loss of housing and/or benefits. These impacts impede recovery efforts upon release and perpetuate not only their homelessness, but also their involvement in the criminal justice system. The proposed program aims to facilitate supportive housing, appropriate treatment, and access to services allowing these individuals to break the cycle, reduce the likelihood of offending, and successfully reintegrate into the community.

⁵ Information provided by Judge Lisa Leone, Des Moines and Normandy Park Municipal Courts, December 2015.

⁶ *Characteristics and Experiences of Adults With a Serious Mental Illness Who Were Involved in the Criminal Justice System*; Robert Constantine Ross Andel John Petril Marjion Becker John Robst Gregory Teague Timothy Boaz Andrew Howe; PSYCHIATRIC SERVICES May 2010 Volume 61 Number 5.

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Although there is ample evidence to support the conclusion that therapeutic courts successfully address the needs of some court participants, there remains a large population that is unable to access the resources and benefits of these courts for any number of reasons. These individuals move in and out of jails, courts, and communities untreated, with little or no support, often leading to increased recidivism and incarceration. Therapeutic courts are typically not an option for these individuals who may be screened out due to their criminal record or due to their inability to manage the expectations of intensely structured therapeutic court options such as mental health court or veterans treatment court (nor is this level of court oversight always indicated if an individual can have their needs and legal issues managed in a less restrictive and intensive program). In addition, eligibility requirements restrict access to these court programs, especially if the type of alleged criminal behavior or behavioral health disorder does not meet the threshold for participation.

These barriers create a system gap, and deprive court participants the very treatment and services necessary to reduce the likelihood of re-offending. This proposal targets this population of court-involved individuals who are otherwise excluded from the traditional therapeutic courts. The proposed program would fill this gap by providing a support system within the court participant's community, outside of the criminal justice system, achieving similar outcomes to those seen in the traditional therapeutic court setting. This pilot program provides the structure to help ensure connection to services, as well as reduce future involvement with the criminal justice system and time spent in the traumatizing environment of the jail, in a formal program that can support individuals' specific needs while holding them accountable for their behaviors.

In summary, individuals with behavioral health disorders who are homeless are significantly more likely to become involved in the criminal justice system than those who have a stable housing environment. In addition, once they do come into the justice system, they are much more likely to remain in custody than be released on bail or personal recognizance. Because they lack a stable residence, officers are more likely to take them to jail than issue a citation, and judges are more likely to conclude that they will fail to appear for a future court date and order them to remain in custody. It is also more challenging to consistently engage homeless individuals in treatment services and, all too often, their connections with behavioral health services are precipitated by crisis situations and law enforcement contacts rather than being guided by an established treatment plan. The result of this pattern is high-cost utilization of medical, emergency, and behavioral health care systems by these individuals, as well as an increased likelihood of cycling in and out of the criminal justice system. As such, a discussion of appropriate housing models for individuals with behavioral health disorders who are also justice-involved is integral to any behavioral health diversion and reentry effort. In particular, the availability of permanent supportive housing is critical to stem the tide of recidivism. The provision of safe, stable, and affordable housing—with necessary supportive services—has been found to be one of the most effective strategies for reducing recidivism.⁷

2. Please describe how the New Concept/Existing MIDD Strategy/Program Addresses the Need outlined above.

The proposed program is intended to break this cycle of criminal conduct, arrest, conviction, sentencing and release back onto the streets by providing wrap-around services including crisis intervention, treatment and housing supports within the individual's community. The care coordinator would follow

⁷ MENTAL HEALTH ADVISORY BOARD REPORT, A BLUEPRINT FOR CHANGE; Jackie Lacey, Los Angeles County District Attorney, August 4, 2015.

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the individual for the length of their enrollment in the program and ensure that pertinent information is provided to the attorneys, law enforcement, and the court. Through this process, the individual would learn and apply the skills necessary to maintain a stable lifestyle within their community, thereby reducing the likelihood of reoffending.

The program is intended to be utilized as a jail alternative that will help increase access to community based treatment and support services for those individuals who are amenable and interested in receiving treatment services. Participation in the program will not only benefit the individual who is court-involved, but also reduce the overall costs associated with criminal case adjudication. Participants will have access to a defense attorney throughout the duration of the program to ensure representation and legal support. The primary intent, however is to connect these court participants with behavioral health disorders to services and supports to address the specific needs that contribute to them cycling in and out of jail. This would include linkages to appropriate housing, treatment, and medical care. Once a participant opts into the program, they would have access to wraparound service plans, targeted to meet the specific needs of the individual. A care coordinator would identify the treatment, crisis, housing, and other community-based services and supports needed to assist the individual in learning and applying skills to maintain stability in their community and move towards recovery. Immediate access to safe and stable housing is a critical component in assisting individuals in maintaining program expectations and reducing criminal justice involvement.

Throughout program engagement, participants would meet regularly with their assigned care coordinator/treatment provider and receive services targeted to meet their individual needs and goals including: housing and housing support services; a comprehensive assessment for physical, mental health, and substance use disorder needs; group and individual counseling; medication management, 24 hours a day access to dedicated crisis response services; intensive case management, assistance with obtaining or re-establishing benefits and entitlements; recovery-based support groups and peer support services; and employment/vocational services.

Upon successful completion of the program, charges are dismissed (or, in the case of a pre-filing diversion, the charges are never filed). For individuals involved in the program with felony drop-down cases, there will likely be a reduction in time spent in jail as well as a dismissal of the case, or an imposition of a lesser sentence, upon completion of the program. Providing services in the community allows for more opportunities to become connected to services and supports, as well as access to housing and employment opportunities, which will help reduce future legal involvement.

3. What EVIDENCE exists that the approach of this New Concept/Existing MIDD Strategy/Program will successfully address the identified need? Please cite published research, reports, population feedback, etc. Why would this New Concept/Existing MIDD Strategy/Program be expected to work? If this is an existing MIDD I strategy, please provide evidence of the results from existing MIDD evaluation reports, including who has/has not benefited from this strategy.

This proposal is based on a pilot program out of LA County that was implemented in September 2014 in the San Fernando and Van Nuys courts. Known as the “Third District Project,” the program assists up to 50 individuals at a time who are chronically homeless and who have a serious mental health disorder. The program is based on a Housing First model, which provides supportive housing at the onset of engagement, creating an environment that supports entry into, and engagement in, treatment services to address mental health and co-occurring SUDs. The Housing First approach in the Third District Project

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helps motivate participants to succeed, because they want to keep the housing provided through the program rather than return to the streets.⁸

Data are not yet available on the implementation of the Third District Program. LA County is in the midst of analyzing Year One results and will not have information on outcomes until sometime in 2016. The LA County's Department of Mental Health reports that they have had over 140 referrals since inception of the pilot program, and have enrolled close to 50 individuals, which was the expected number of individuals to be served annually.⁹

The program was developed after outcomes from the LA County's Housing First program ("Project 50") showed positive impacts – namely, a decrease in the rate of recidivism within the targeted population.

"The data show that for the Project 50 program group, the annual average cost per occupied housing unit was \$12,444 during the pre-program year, and then fell to \$8,900 during the post-program year, a decline of 28 percent. Project 50 participants reduced their incarceration episodes significantly.... The number of incarcerated persons in the program group dropped from 24 in the pre-program year to 16 in the post-program year. Over the same period, the number of incarcerated persons in the comparison group increased from 26 to 28. Additionally, the average annual number of days of incarceration dropped from 30 to 19 days for the program group but stayed at approximately 40 days for the comparison group between the pre-program and post-program years."¹⁰

The success of this program underscores the key role that supportive housing supports and services play in reducing the cost and frequency of contacts with the criminal justice system.

Therapeutic courts, although somewhat different in structure and scope, offer similar supportive programming geared towards reducing recidivism and increasing connection to community based resources. A 2015 literature review of mental health court data, involving analysis of 15 studies evaluating impact on recidivism, revealed mental health courts significantly reduced new arrests and days spent incarcerated in 13 of 15 studies reviewed.¹¹ For example, one study of over 1,000 court-involved individuals found that mental health court participants spent 44 percent fewer days in jail—82 days fewer in total—relative to individuals participating in mainstream court, who averaged 152 jail days. The author of the review concludes, "Thus far, a small but growing body of mental health court research indicates that it is plausible these courts have the ability to accomplish their primary aim, that is, to reduce criminal recidivism rates of persons with mental illness."¹² Carol Fidler, the director of mental health court programs at the Center for Court Innovation, notes that mental health courts work because they stop a cycle of repeated harsh punishment, and instead give people experiencing mental illness the tools they need to change their behavior.¹³ Mental health courts, and projects such as the Diversion and Alternative Sentencing Pilot Program, are intended to reduce harm and increase access to, and engagement in, critical behavioral health and social services.

⁸ MENTAL HEALTH ADVISORY BOARD REPORT, A BLUEPRINT FOR CHANGE; Jackie Lacey, Los Angeles County District Attorney, August 4, 2015.

⁹ Phone interview with Flora Gil Krisiloff, December, 2015.

¹⁰ Project 50: The Cost Effectiveness of the Permanent Supportive Housing Model in the Skid Row Section of Los Angeles County; Research and Evaluation Services; Manuel Moreno, Principal Investigator, Halil Toros, Max Stevens; June 2012.

¹¹ "Does the Evidence Support the Case for Mental Health Courts? A Review of the Literature," Honegger, L.N. Law and Human Behavior, 2015.

¹² Ibid, Honegger, L.N. (2015).

¹³ "When Research Challenges Policy and Practice: Toward a New Understanding of Mental Health Courts," Fidler, C. Judges' Journal. 2015. NOV/DEC 2015 • PSMAG.COM.

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4. Please specify whether this New Concept/Existing MIDD Strategy/Program is a/an: Emerging Practice Please detail the basis for this determination. Please include a citation or reference supporting the selection of practice type.

Data are not yet available on the Third District Program; LA County is in the midst of analyzing year one results and will not have information on outcomes until later on in 2016. However, the Housing First program model is an evidence-based practice. Jail Diversion program models are also considered best practices. A study done on jail diversion programs for individuals with mental health and co-occurring substance use disorders concluded that jail diversion reduces jail stays, links individuals to services in the community, and does not increase risk to public safety. “Data from the six sites in the SAMHSA Jail Diversion Initiative suggest the following: 1) jail diversion ‘works’ in terms of reducing time spent in jail, as evidenced by diverted participants spending an average of two months more in the community; 2) jail diversion does not increase public safety risk and, despite more days in the community, diverted participants had comparable re-arrest rates in the 12-month follow-up period; 3) jail diversion programs link diverted participants to community-based services, although it is not clear from the data whether individuals receive the type, amount, and mix of services, including evidence-based practices, they need to improve outcomes, such as mental health symptoms.¹⁴

5. What OUTCOMES would the County see as a result of investment in this New Concept/Existing MIDD Strategy/Program? Please be as specific as possible. What indicators and data sources could the County use to measure outcomes?

The return on investment in the proposed program includes the following:

- Reduction in the numbers of jail admissions and length of stay for participants,
- Reduction in recidivism for participants,
- Reduced law enforcement contacts for individuals participating in the program,
- Decreased utilization and costs of criminal justice resources,
- Increased number of participants engaging in ongoing mental health and/or SUD treatment programs,
- Increased number of individuals in appropriate housing options, and
- Increased number of connections to community-based services to foster stability in their community and housing.

The best outcome is a documented reduction in the rate of the recidivism in the target population. This, in turn, results in fewer law enforcement contacts with these individuals and a corresponding reduction in the costs of incarceration and prosecution. For the individual, in addition to reducing the likelihood of re-offending, success is measured by on-going engagement in treatment, ability to secure and maintain appropriate housing, pursuit of employment opportunities, and overall positive reintegration into the individual’s local community.

In order to quantify the success of the proposed program, care coordinators will collect and submit data and information on the program’s participants including: demographics, referral sources, dispositions, housing status, and program length of stay/utilization. Data sources include: internal data that the King County Mental Health, Chemical Abuse and Dependency Services Division (MCHADSD) collects on individual-specific demographics, referrals, linkages and treatment admissions; booking and length of stay data already available to MCHADSD from municipal jails, King County Department of Adult and

¹⁴ Steadman, H. J. and Naples, M. (2005), Assessing the effectiveness of jail diversion programs for persons with serious mental illness and co-occurring substance use disorders. *Behavioral Sciences and the Law*, 23: 163–170. doi: 10.1002/bsl.640.

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Juvenile Detention (DAJD), and the Washington State Department of Corrections; and demographic and service data available through the Homeless Management Information System (HMIS).

C. Populations, Geography, and Collaborations & Partnerships

1. What Populations might directly benefit from this New Concept/Existing MIDD

Strategy/Program: (Select all that apply):

- | | |
|--|--|
| <input type="checkbox"/> All children/youth 18 or under | <input checked="" type="checkbox"/> Racial-Ethnic minority (any) |
| <input type="checkbox"/> Children 0-5 | <input type="checkbox"/> Black/African-American |
| <input type="checkbox"/> Children 6-12 | <input type="checkbox"/> Hispanic/Latino |
| <input type="checkbox"/> Teens 13-18 | <input type="checkbox"/> Asian/Pacific Islander |
| <input type="checkbox"/> Transition age youth 18-25 | <input type="checkbox"/> First Nations/American Indian/Native American |
| <input checked="" type="checkbox"/> Adults | <input checked="" type="checkbox"/> Immigrant/Refugee |
| <input checked="" type="checkbox"/> Older Adults | <input checked="" type="checkbox"/> Veteran/US Military |
| <input type="checkbox"/> Families | <input checked="" type="checkbox"/> Homeless |
| <input type="checkbox"/> Anyone | <input checked="" type="checkbox"/> GLBT |
| <input checked="" type="checkbox"/> Offenders/Ex-offenders/Justice-involved | <input checked="" type="checkbox"/> Women |
| <input checked="" type="checkbox"/> Other – Please Specify: Individuals, 18 years of age and older, with mental health and/or SUDs booked into jail on defined misdemeanor or felony offenses and who are ineligible for, or not provided the option of, pre-booking diversion. | |

Please include details about this population such as: individuals transitioning from psychiatric hospital to community; individuals judged incompetent by the court; children of drug users who are in foster care, etc.

Individuals, 18 years of age and older, with mental health and/or SUDs booked into jail on eligible misdemeanor or felony charges who are currently excluded from programs such as LEAD and the Crisis Diversion Facility due to criminal history and other exclusionary criteria. Additionally, this would include incarcerated individuals with behavioral health needs who are either ineligible for therapeutic courts, or who have opted not to participate in those more structured programs. The result is an ongoing cycling of these individuals through the criminal justice system, without any access to services and supports that could assist them on their road to recovery.

2. Location is an important factor in the availability and delivery of services. Please identify whether this New Concept/Existing MIDD Strategy/Program addresses a specific geographic need in the following area. Please provide additional that discusses the basis for the selection: County-wide

Individuals from any jurisdiction within King County would be eligible for inclusion into this program if they meet defined eligibility requirements (yet to be determined).

3. What types of COLLABORATIONS and/or PARTNERSHIPS may be necessary to implement this New Concept/Existing MIDD Strategy/Program, and with whom (other jurisdictions & cities, law enforcement, first responders, treatment providers, departments within King County, housing, employers, etc.)? Please be specific.

The proposed program would involve many stakeholders within the local criminal justice community. Partnerships necessary to implement this program include: King County DAJD; South Correctional Entity (SCORE) and other misdemeanor jail facilities in King County; King County Prosecuting Attorney; King County Department of Public Defense; King County Superior Court; King County District Court; state and

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local judges, municipal courts and prosecutors; community-based treatment providers; housing and shelter programs; Washington Department of Veteran Affairs; Washington State Department of Social and Health Services; primary care providers in King County; King County Department of Community and Human Services; and Public Health – Seattle & King County.

Additionally, All Home¹⁵ has recently released a new strategic plan to address homelessness in King County. This new plan outlines an array of strategies, including advocating for more state and federal funding, increasing the stock of subsidized housing and adding shelter capacity while, at the same time, diverting people from such facilities through an intake system that is more flexible.¹⁶ The Coordinated Entry for All (CEA)¹⁷ approach is in development to apply a coordinated entry system-wide and ensure the strengths and benefits of the system are felt by all with equitable access to for all persons experiencing homelessness. The intention is to connect individuals experiencing homelessness to available housing and appropriate service options by streamlining and reducing intensive assessment and screening as much as possible and shorten the amount of time spent navigating resources and eligibility. The Diversion and Alternative Sentencing Pilot Program could coordinate with this approach to help connect individuals experiencing homeless to needed resources.

D. Drivers, Barriers, Unintended Consequences, and Alternative Approaches

1. What FACTORS/DRIVERS, such as health care reform, changes in legislation, etc. might impact the need for or feasibility of this New Concept/Existing MIDD Strategy/Program? How?

Health care reform will play a significant role in the work of the Diversion and Alternative Sentencing Pilot Program. Specifically, Washington's recent application to the federal Centers for Medicare and Medicaid Services for a Section 1115 Medicaid waiver¹⁸ and the movement towards full integration of physical and behavioral health integration could have a great impact on the work of this program. The services provided would be an early step in the continuum of care, intended to provide stabilization services and promote access to care. The longer term goal of connection and ongoing maintenance of services, regardless of whether the individual's needs are related to mental health, substance use or co-occurring disorders, fits well with the integration of behavioral health care. Without the benefits obtained through healthcare reform, many of these individuals would have been deemed ineligible for Medicaid or other healthcare coverage based on exclusionary factors no longer in place. Without access to benefits, most of the therapeutically appropriate services needed for stabilization (e.g., treatment, medications, and housing) would not be available to them, and they would continue to cycle through the hospital and jail settings. Additionally, the Familiar Faces initiative links to the work of this program, as the Diversion and Alternative Sentencing program model works to reduce the number of individuals with behavioral health needs cycling through the costly criminal justice system, often many of whom are ineligible for, fearful of, or unable to access services and supports in the community to help manage their behavioral health needs.

2. What potential BARRIERS, if any, might there be to implementation? How might these be overcome? Who would need to be involved in overcoming them?

Local municipalities, including prosecutors and judges, would need to agree to the idea of a pre-trial diversion and alternative sentencing program for individuals in their jurisdictions. Risk management

¹⁵ <http://allhomekc.org/>.

¹⁶ Nino Shapiro, Seattle Times staff reporter; *Helping homeless: Group has new name, new strategy*, Seattle Times, originally published October 4, 2015 at 6:48 pm, updated October 5, 2015 at 10:23 am.

¹⁷ <http://allhomekc.org/coordinated-entry-for-all/>

¹⁸ <http://kff.org/medicaid/issue-brief/the-aca-and-medicaid-expansion-waivers/>.

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within different municipalities may come to different determinations about the scope of what the service provider will be allowed to do in conjunction with their court processes. It may be difficult for the service provider to manage differing expectations of various jurisdictions. In addition, service providers may have difficulty managing multiple court environments and referrals if the program is not centrally located within a local court(s).

There will be a need for coordinated, cross-systems training for local criminal justice partners and the service provider in coordinating care, expectations of each other's roles, basic court processes and mental health service options and protocols, crisis intervention, and community resources in order to ensure consistency across jurisdictions.

3. What potential UNINTENDED CONSEQUENCES might exist if this New Concept/Existing MIDD Strategy/Program is implemented? Please be specific---for whom might there be consequences?

Law enforcement officers may opt to not utilize the current pre-booking diversion programs currently in place as a result of implementation of this pilot program. It is possible that they would see this as a fail-safe program, where they would not have to make a determination in the field that an individual should be diverted and could rely on this program to make those decisions post-booking.

In Washington State (and nationally), there is a dearth of SUD treatment beds available. For program participants who may be seeking immediate care and transfer to a SUD program, difficulties in placing individuals in SUD inpatient, detox, or residential programs could be a challenge for the program.

The team could work to place individuals in permanent housing only to find that there are no available beds. Bridge housing options would only be in place temporarily, while the individual is involved in the program, and this could result in a return to homelessness or unstable housing environments.

4. What potential UNINTENDED CONSEQUENCES might there be if this New Concept/Existing MIDD Strategy/Program is *not* implemented? Please be specific---for whom might there be consequences?

Individuals with behavioral health disorders will continue to utilize costly resources such as emergency departments (EDs) and jails due to the symptoms of their disorder(s). Law enforcement and other first responders will continue to utilize jail and hospital settings to address the needs of this population. The ability to successfully connect individuals to the broad array of services that may be available to assist them and reduce their involvement with criminal justice entities will continue to be a challenge without additional support. Without the pilot program, individuals requiring assistance in accessing mental health or SUD services will continue to live in unsupportive environments, and struggle with environmental, social, and behavioral health stressors, which are often affiliated with acute behavioral problems and crises in the community. The result is a continuing reliance on local law enforcement, hospitals, jails and courts to act as intermediaries for the behavioral health community, in lieu of meaningful engagement with community-based behavioral health services. This issue is not unique to King County; local and national news outlets regularly report on the number of incarcerated individuals who lack access to much-needed mental health and SUD resources. Without programs such as this that provide alternative options for appropriately addressing the needs of this population, there will continue to be an over-reliance on jails, hospitals, and law enforcement, as well as increased use of force, to manage this population.

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- 5. What ALTERNATIVE APPROACHES currently exist to address this need apart from this New Concept/Existing MIDD Strategy/Program? At a high level, how does this New Concept/Existing MIDD Strategy/Program compare to those other approaches in terms of cost, feasibility, etc. Could this New Concept/Existing MIDD Strategy/Program be merged with one or more of the alternatives? What are the pros/cons of merging?**

The LEAD and CSC programs provide pre-booking alternatives for individuals with behavioral health disorders. Currently, the LEAD program is only available for individuals within certain defined geographic areas (although the program is intending to expand county-wide). The CSC programs, although available countywide, require law enforcement officers to coordinate with the program on transportation issues that may impede utilization of the resource for a jail diversion alternative, and has limitations on eligibility that can restrict utilization and that may be addressed more easily through this pilot program. There is a lack of resources and diversion options for first responders working in many of the jurisdictions and unincorporated areas of King County. Law enforcement in these jurisdictions have limited options for diverting individuals who are in any kind of behavioral health crisis, or in need of sobering services, away from local jails and hospitals/EDs. Current options require law enforcement officers to drive into downtown Seattle, which takes them off the streets and away from their duties for significant periods of time, and potentially wait hours for a response from the Mobile Crisis Team (MCT). This program would allow for increased access to therapeutically appropriate services for individuals who are ineligible for pre-booking diversion, or for whom the option for diversion may not have been considered by law enforcement prior to booking into jail.

While therapeutic courts also address the needs of individuals with behavioral health disorders, many individuals experiencing serious mental health issues, who are incarcerated in King County (including the Familiar Faces who have been incarcerated four or more times in a 12-month period), do not participate in the therapeutic courts. Reasons for lack of participation include but are not limited to the following: failure to meet eligibility criteria, inability to manage the expectations of the court, and court participation requiring prolonged, intensive probation. In fact, only eight and one-half percent of the 2014 Familiar Faces cohort had opted-in to a King County specialty court (i.e., King County Regional Mental Health Court, City of Seattle Mental Health Court, or King County Adult Drug Diversion Court) in 2014.¹⁹ The proposed program fills a need for the targeted population of those individuals rendered ineligible for participation in local therapeutic courts. Additionally, many individuals may not require the level of programming and supervision provided by therapeutic courts such as mental health court or veterans treatment courts. This program provides an alternative method for holding individuals accountable while, at the same time, connecting them to needed services and resources aimed at reducing the likelihood of re-offense.

E. Countywide Policies and Priorities

- 1. How does this New Concept/Existing MIDD Strategy/Program FIT within the CONTINUUM of care, and within other county initiatives such as Behavioral Health Integration, Health and Human Services Transformation, Best Starts for Kids, All Home, the Youth Action Plan, and/or the Vets and Human Services Levy or any other County policy work?**

This program is in line with the Sequential Intercept Model (SIM) under the premise that the sooner individuals can be intervened with, in their own communities, the more likely they are to stay out of the

¹⁹ Srebnik, D., *Familiar Faces: Current State – Analyses of Population*. (September 28, 2015), data summary packet provided to the Familiar Faces Design Team Current State Mapping.

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crisis and criminal justice systems and get the on-going help they need. The Diversion and Alternative Sentencing Pilot Program is an early step in the continuum of care, and is considered to fall on Intercept Two of the SIM: Post-Arrest/Arraignment. The program's focus is on early intervention and diversion from criminal courts and jail; diversion at Intercept Two minimizes custody time, because it takes place early in the process, and may or may not include a criminal conviction. This program is intended to provide immediate access to services and supports to promote tenure in the community and reduce further criminal justice involvement. This pilot program links to the Recovery and Resiliency – Oriented Behavioral Health Services Plan through the recognition that recovery may take long-term engagement efforts on the part of service providers to support the recovery process.

The Diversion and Alternative Sentencing Pilot Program should link with Behavioral Health Integration, especially given the anticipated high levels of co-occurring disorders in the population of focus, which will allow for more integrated and streamlined access to services. Additionally, the Familiar Faces initiative links to the work of this program, as the Diversion and Alternative Sentencing program model works to reduce the number of individuals with behavioral health needs cycling through the costly jail and hospital systems. Many of them are ineligible for, fearful of, or unable to access, services and supports in the community to help manage crises.

2. How is this New Concept/Existing MIDD Strategy/Program rooted in principles of recovery, resiliency, and/or trauma-informed care?

There are many accounts in various news outlets of law enforcement response to suspects suffering from mental health issues or crises. There are a corresponding number of studies and reports of the number of individuals currently incarcerated who are suffering from serious mental health or SUDs. Lacking other options, first responders frequently send or refer individuals with behavioral health disorders to EDs and jails, due to the symptoms of their disorder(s). These resources are costly; moreover, these environments can be traumatizing to those suffering from behavioral health disorders, exacerbating existing symptoms, especially if they have previously experienced imprisonment or restraint due to detainments or involuntary hospitalizations. The Diversion and Alternative Sentencing Pilot Program is intended to provide an additional diversion option that reduces the over-reliance on the criminal justice and crisis triage systems to manage this population. This program is intended to work with the understanding and recognition that recovery can take time, and long term engagement efforts are often needed to build relationships and impact behavior change to support the recovery process.

Individuals with behavioral health disorders, especially those who cannot make bail, spend more time in custody and their court cases often take longer to adjudicate often due to symptoms of their mental health and/or SUD, which further adds to costs for jail and courts. Incarceration disrupts treatment in the community, exacerbates symptoms, contributes to or perpetuates homelessness, and impedes recovery. This pilot program would help individuals to access permanent supportive housing and appropriate treatment for mental health and/or SUDs, while also reducing jail related costs. Additionally, King County MHCADSD is partnering with several other County and City of Seattle departments to apply for a Train-The-Trainer Trauma Informed Care grant which includes two days of training for trainers for community based criminal justice system professionals including law enforcement, court personnel, prosecution, defense, corrections, community based providers and others on the topic of "How Being Trauma Informed Improves Criminal Justice System Responses."²⁰ This training is intended to prepare King County and Washington State to move toward implementing a

²⁰Substance Abuse Mental Health Services Administration, GAINS Center of Behavioral Health and Justice Transformation; <http://www.samhsa.gov/gains-center/trauma-training-criminal-justice-professionals>.

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trauma informed continuum of services. The primary goals of the training are to 1) increase understanding of trauma, 2) create an awareness of the impact of trauma on behavior, and 3) develop trauma-informed responses. Achieving these goals will decrease recidivism, increase safety and promote and support the recovery of justice involved persons by linking them to appropriate treatment and support services. Should King County be awarded the grant, the Diversion and Alternative Sentencing Pilot Program and interested affiliated partners (law enforcement, case manager/care management teams, etc.) would receive this invaluable training regarding providing services within the context of trauma-informed care and criminal justice.

3. How does this New Concept/Existing MIDD Strategy/Program enact and further the County's EQUITY and SOCIAL JUSTICE work?

Many individuals with behavioral health disorders, who are often experiencing homelessness, come into contact with law enforcement and the criminal justice system due to behaviors stemming directly from these very issues (i.e., living on the street, experiencing behavioral health crises, engaging in survival economies). They are taken to jail in lieu of addressing the root cause of the matter: lack of access to treatment, housing, jobs, support, and healing and recovery. Access to a community of people who care and value them is imperative. At its founding, this program addresses equity and social justice, and appropriate access to justice, by helping people avoid further involvement in the criminal justice system.

The Diversion and Alternative Sentencing Pilot Program would focus on both reducing criminalization of behavioral health disorders, and reducing the reliance on jails to address a community need. The program will coordinate and collaborate with a wide variety of systems and community supports that have not been available or responsive to the individual's needs, and work to break down barriers to access that may have prevented successful interactions with community based services.

In addition, the Diversion and Alternative Sentencing Pilot Program's focus on promoting stability and assisting with housing supports and needs for individuals who are homeless or unstably housed, also supports the goals of King County's All Home initiative, which aims to make homelessness rare, brief, and one-time by addressing crises quickly and tailoring housing and supports to individual needs,²¹ and addresses the state of emergency regarding homelessness declared by the City of Seattle and King County in November 2015.²² Its individually tailored service designed to connect people to housing and services also relates to two determinants of equity identified by the King County Equity and Social Justice (ESJ) work: access to health and human services and affordable, safe, quality housing.²³

The U.S. Department of Justice asserted in a statement of interest that "It should be uncontroversial that punishing conduct that is a universal and unavoidable consequence of being human violates the Eighth Amendment...Sleeping is a life-sustaining activity—i.e., it must occur at some time in some place... Criminally prosecuting those individuals for something as innocent as sleeping, when they have no safe, legal place to go, violates their constitutional rights... Needlessly pushing homeless individuals into the criminal justice system does nothing to break the cycle of poverty or prevent homelessness in the future. Instead, it imposes further burdens on scarce judicial and correctional resources, and it can

²¹ <http://allhomekc.org/the-plan/#fndtn-brief-and-one-time>. Accessed on 12/17/15.

²² <http://www.seattletimes.com/seattle-news/politics/mayor-county-exec-declare-state-of-emergency-over-homelessness/>. Accessed on 12/17/15.

²³ http://www.kingcounty.gov/~media/elected/executive/equity-social-justice/2015/The_Determinants_of_Equity_Report.ashx?la=en. Accessed on 12/17/15.

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have long-lasting and devastating effects on individuals' lives."²⁴ Criminalizing homelessness is not the answer. Programs such as the Diversion and Alternative Sentencing Pilot Program, which work with local community partners, will help ensure individuals access the resources and services they need to obtain and maintain permanent and stable housing and reduce legal system involvement.

F. Implementation Factors

1. What types of RESOURCES will be needed to implement this New Concept/Existing MIDD Strategy/Program (staff, physical space, training, UA kits, etc.)?

Program staff, office space, cooperative agreements with local court and community provider partners, and training for program partners (i.e., court personnel) and community stakeholders (i.e., law enforcement) on the program intentions and services are necessary. Additionally, the program will need to ensure immediate access to bridge housing upon admission to the program for individuals who are homeless or unstably housed.

2. Estimated ANNUAL COST. \$501,000-\$1.5 million Provide unit or other specific costs if known.

Current funding for the LA County program, which serves a maximum of 50 individuals at a time, is in the amount of \$756,759 per year; however, it is unclear how this would correspond with a program in King County. The LA County funding includes bridge housing options, with the understanding that their current provider would use all available resources to obtain permanent supportive housing. It is anticipated that specific, commensurate costs in King County to the same capacity of 50 individuals will include bridge housing, court and program staff, office space, computing equipment including laptops, mileage reimbursement cell phones and wireless service plan, and insurance (malpractice and liability). Projected annual cost to serve a capacity of 75 individuals is \$1 million; projected annual cost to serve a capacity of 100 individuals is \$1.3 million.

3. Are there revenue sources other than MIDD that could or currently fund this work? Clarify response, citing revenue sources.

The intensive case management services, specifically services such as travel, meeting time and consultation, are not funded by current payers. However, there may be sources of support available if such service efforts become payable under a Section 1115 Medicaid waiver.²⁵ There may be the possibility of funding Medicaid reimbursable services through local funding for mental health outpatient services. This would need to be arranged through the King County Behavioral Health Organization.

4. TIME to implementation: 6 months to a year from award

a. What are the factors in the time to implementation assessment?

Factor to implementation include the development of collaborative agreements between court(s) and program provider; development of eligibility criteria; hiring of program staff; and identification of program(s) that provide bridge housing along with the development of Memoranda of Agreement) with these programs to ensure immediate access to this resource for participants who are homeless at the time of referral.

b. What are the steps needed for implementation?

The creation of an interagency planning group will be needed to develop programmatic expectations and develop a Request for Proposal (RFP). Scheduling of stakeholder meetings to

²⁴ *Bell v. City of Boise et al.* was filed in the District of Idaho in 2009. United States Department of Justice STATEMENT OF INTEREST OF THE UNITED STATES Case 1:09-cv-00540-REB Document 276 Filed 08/06/15, page 3 of 17.

²⁵ *Ibid*, <http://kff.org/medicaid/issue-brief/the-aca-and-medicaid-expansion-waivers/>.

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provide education about the program and allow an opportunity for stakeholders to give feedback and identify concerns. The agency or agencies awarded the program components will need to hire and train staff prior to the facility opening.

c. **Does this need an RFP?** Yes.

G. Any OTHER INFORMATION that would assist reviewers with making recommendations about this New Concept/Existing MIDD Strategy/Program? (optional). Do you have suggestions regarding this New Concept/Existing MIDD Strategy/Program?

This proposal links to multiple other briefing papers related to diversion and care coordination programs, including:

- BP 37, 51, 64, 66 South County Crisis Center;
- BP 16 Immediate Community Care for Individuals Experiencing a Mental Health Emergency;
- ES 17a, BP 4 Crisis Intervention Team-Mental Health Partnership;
- ES 1b BP 34 39 72 Outreach System of Care;
- ES 10b Crisis Diversion Facility;
- BP 114 Familiar Faces;
- BP 23 Law Enforcement Assisted Diversion Maintenance and Expansion;
- ES Seattle MHC 11b BP 118, 133, 136 Competency Continuum of Care; and
- BP 61 Implementation of South King County Community Court.

#85

Working Title of Concept: Diversion and Alternative Sentencing Pilot Program

Name of Person Submitting Concept: Susan Schoeld

Organization(s), if any: King County MHCADSD

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Please note that county staff may contact the person shown on this form if additional information or clarification is needed.

Please share whatever you know, to the best of your ability.

*Concepts must be submitted via email to MIDDconcept@kingcounty.gov by **October 31, 2015**.*

1. Describe the concept.

Please be specific, and describe new or expanded mental health or substance abuse-related services specifically.

The proposed program will divert individuals with serious mental health and/or substance use disorders, brought to jail for non-violent criminal offenses, from incarceration to treatment. Individuals would be diverted out of the criminal justice system, after booking with services and support wrapped around them to help manage the transition to the community and appropriate services and resources. Individuals will be diverted from incarceration, probation and fines, and provided services and supports to assist with stabilization and maintaining safely in the community.

Individuals would not have to plead guilty to a misdemeanor in order to be eligible, and individuals who allegedly committed a felony offense would be eligible if they plead no contest or guilty; in the latter

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instance, an individual may have their charges dismissed and probation terminated. Prospectively eligible individuals would be identified at any time after they are booked into jail by corrections staff, jail health staff, or court personnel. A mental health clinician will subsequently assess the individual and work with their attorney to make a recommendation to the court to divert the case into an alternative sentencing program. If accepted, the individual will be connected to a care coordinator who will complete a needs assessment and work with the individual in the community to access needed services, including treatment, housing, and medical care. This program will serve individuals with both misdemeanor and felony offenses, and will require participants to follow treatment recommendations and court requirements during their involvement in the program. Misdemeanor and felony cases would have different levels of program engagement criteria.

This program is based on a program out of Los Angeles County that was implemented in September 2014. Additional program information and resources are available from LA County to assist with development and implementation. Current funding for the LA County program is \$756,759; however it is unclear how this would correspond with a program in King County. The funding includes bridge housing options, with the understanding that their current provider would use all available resources to obtain permanent supportive housing.

2. What community need, problem, or opportunity does your concept address?

Please be specific, and describe how the need relates to mental health or substance abuse.

Individuals with mental health and/or substance use disorders (SUD) continue to get booked into jail due to related behaviors. There are limited program and services available to law enforcement officers for diversion from the jail system when coming into contact with the target population on the street, and those services that do exist have exclusionary criteria related to current offense and criminal history, that keep many individuals from being able to access alternative programs. These individuals continue to cycle through jails without getting connected to appropriate services or supports to assist them in connecting with, and managing, these services in the community.

3. How would your concept address the need?

Please be specific.

Individuals with mental illness/SUDs would be connected to services and supports that could address the specific needs that contribute to them recycling in and out of jail. This would include linkages to appropriate treatment, medical care and housing. The provider would follow the individual for the length of their enrollment in the project and ensure that pertinent information is provided to the court. Wraparound services with treatment and crisis and housing supports would assist the individual in learning and applying skills to maintain stability in their community and move towards recovery.

4. Who would benefit? Please describe potential program participants.

Individuals, 18 years of age and older, with mental health and/or substance use disorders booked into jail on misdemeanor or felony offenses who are currently excluded from programs such as LEAD and the Crisis Diversion Facility due to criminal history and other exclusionary criteria. Additionally, this would include individuals in the jail with behavioral health needs who are either ineligible for therapeutic courts, or who have opted not to participate in those more structured programs. The result is an ongoing recycling of these individuals through the criminal justice system, without any access to services and supports that could assist them on their road to recovery.

5. What would be the results of successful implementation of program?

Include outcomes that could be measured and evaluated. Please indicate whether this data is currently collected in some fashion, and in what form.

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Reduction in # of jail admissions and length of stay for all participants
Reduction in recidivism for enrolled individuals
Admissions of participants into ongoing mental health and/or substance use treatment programs
Increased # of individuals in appropriate housing options

Applicable data are currently available through the KC Information System, and the goal would be for the individual coordinating the care to be a community provider who will be required to submit data and information on participants into this system.

6. Which of the MIDD II Framework's four strategy areas best fits your concept? (you may identify more than one)

- Prevention and Early Intervention:** Keep people healthy by stopping problems before they start and preventing problems from escalating.
- Crisis Diversion:** Assist people who are in crisis or at risk of crisis to get the help they need.
- Recovery and Reentry:** Empower people to become healthy and safely reintegrate into community after crisis.
- System Improvements:** Strengthen the behavioral health system to become more accessible and deliver on outcomes.

7. How does your concept fit within the MIDD II Objective – to improve health, social, and justice outcomes for people living with, or at risk of, mental illness and substance use disorders?

Individuals with mental illness/SUDs, especially those who cannot make bail, spend more time in custody and their court cases often take longer to adjudicate often due to symptoms of their mental health and/or SUD, which further adds to costs for jail and courts. Incarceration disrupts treatment in the community, exacerbates symptoms, contributes to or perpetuates homelessness, and impedes recovery. This program would help individuals access permanent supportive housing and appropriate treatment for mental health and/or SUDs, while also reducing jail related costs.

8. What types of organizations and/or partnerships are necessary for this concept to be successful? Examples: first responders, mental health or substance abuse providers, courts, jails, schools, employers, etc.

King County Department of Adult and Juvenile Detention, King County Prosecuting Attorney, King County Department of Public Defense, mental health and substance use disorder treatment providers.

9. If you are able to provide estimate(s), how much funding per year do you think would be necessary to implement this concept, and how many people would be served?

Pilot/Small-Scale Implementation: \$ Unknown per year, serving # of people here people per year
Partial Implementation: \$ # of dollars here per year, serving # of people here people per year
Full Implementation: \$ # of dollars here per year, serving # of people here people per year

Once you have completed whatever information you are able to provide about your concept, please send this form to MIDDConcept@kingcounty.gov, no later than 5:00 PM on October 31, 2015.

If at any time you have questions about the MIDD new concept process, please contact MIDD staff at MIDDConcept@kingcounty.gov.

