Justice Involved Therapeutic Intervention (JITI)

by
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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]

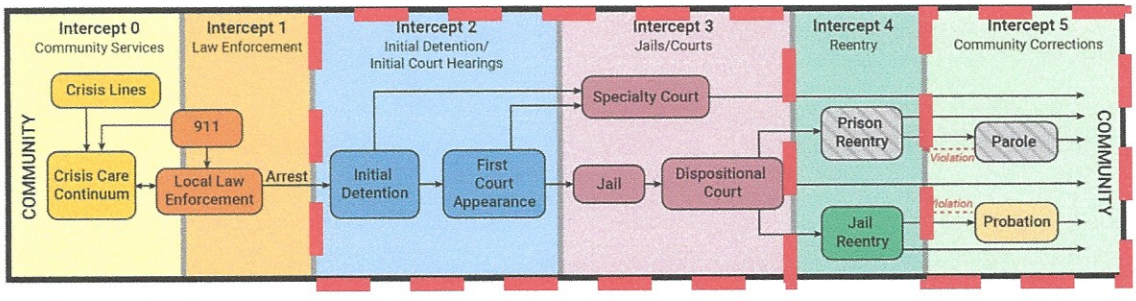
2. What is the Sequential Intercept Model?

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 misdemeanant probation, but such services must be separately contracted for with DOC by each jurisdiction. RCW 9.95.204.

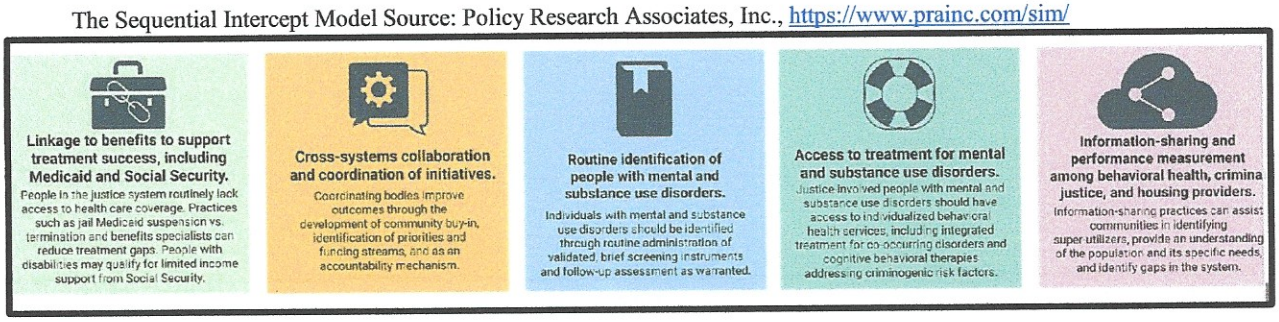
FIGURE 1



[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, 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:

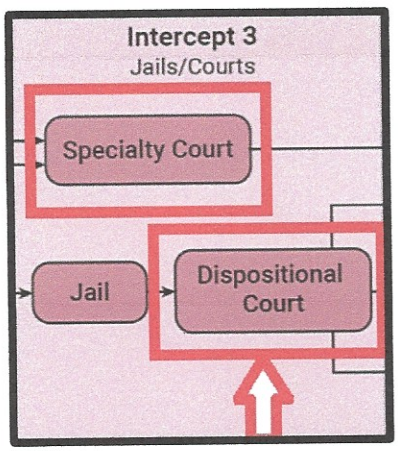
> *"Mental health courts, drug courts, and other treatment courts have become an increasingly common part of the judicial landscape and define much of the conversation at Intercept 3. Reentry from jail or prison, Intercept 4, has become a core topic in general discussions regarding correctional policies 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).*
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> ***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

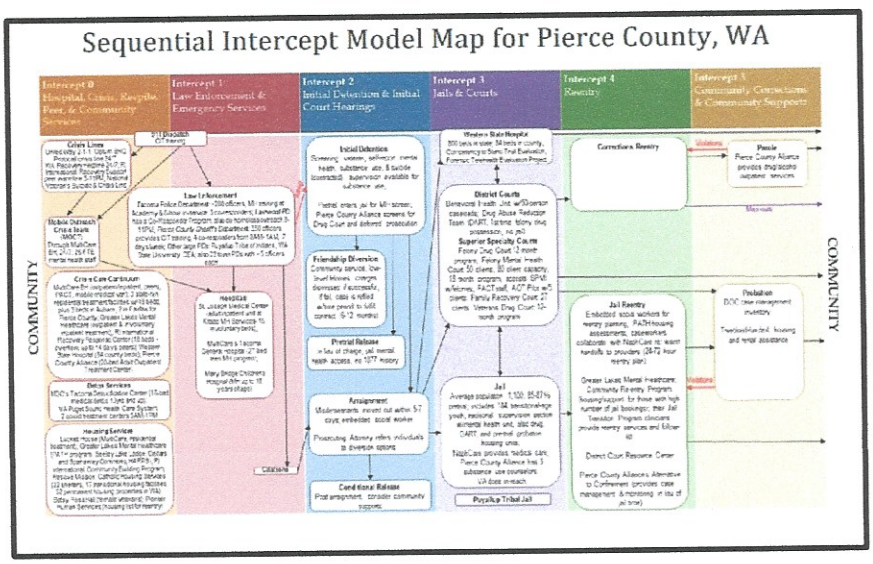
is still a best practice. The observation of the necessity for early intervention and treatment in Intercept 2 is also consistent with Chapter 4 of *Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health*.

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.

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[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.