

Assessment of Seattle Municipal Court Probation Racial and Ethnic Proportionality

September 23, 2021

Virginia B. Garcia

David G. Jones, City Auditor

We recognize that our office is on the traditional land of the Duwamish People, the first people of Seattle. We honor the land and the Duwamish People, past and present.



Seattle Office of City Auditor

Assessment of Seattle Municipal Court Probation Racial and Ethnic Proportionality

Report Highlights

Background

In Seattle Municipal Court (SMC), probation is court supervision instead of jail or after jail release to ensure the fulfillment of court ordered obligations or conditions. It is the predominate method of court sentencing that can last years for misdemeanor lower-level offenses. An obligation is a court requirement or condition imposed on an individual as part of their sentencing or court agreement such as performing community service or attending substance abuse counseling. Given existing racial and ethnic disparities in the criminal legal system, probation can disproportionately burden people of color with court obligations, fines, and incarceration when the terms of probation are not met. When individuals meet court obligations, courts often can continue to supervise them, through periodic records checks, to ensure that they did not commit new crimes. Studies have shown that unnecessary and excessive imposition of probation can be counterproductive to reducing recidivism. In deciding to fund and staff a probation function, the City of Seattle must ensure that its probation program is not contributing to racial disparities present in our criminal legal system and that probation results in successful outcomes for everyone.

What We Found

While we found racial and ethnic disproportionality in the composition of SMC's 2017-2019 probation population and other aspects of SMC's probation program, we also saw SMC make progress towards addressing recommendations in the Court initiated Vera Institute of Justice June 2020 probation study and issues our office identified during this audit. However, we also found more work can be done to address racial and ethnic disproportionality in probation. Our review of probation data revealed that Blacks/African Americans are particularly overrepresented in the most intrusive forms of probation supervision monitoring, are underrepresented in successful probation outcomes, and tend to have cases that remain open rather than being closed after obligations are met. In reviewing the impacts of probation on people of color, we found that SMC's efforts to promote equity within its probation system were hampered by data gaps, and a lack of



WHY WE DID THIS AUDIT

We conducted this audit in response to a 2020 Seattle City Council Statement of Legislative Intent. Our objective was to review the Seattle Municipal Court's probation program with a focus on racial proportionality.

HOW WE DID THIS AUDIT

To accomplish the audit's objectives, we:

- Reviewed probation studies, state and local laws, and SMC probation policies;
- Observed the use of SMC's risk assessment tool that determines supervision levels;
- Analyzed SMC probation population data by race and ethnicity and identified data gaps;
- Conducted interviews with Seattle Municipal Court, Seattle Police Department, City Attorney's Office, and King County Jail officials.

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performance outcomes, accurate accounting of fines and fees, and internal controls. We found SMC did not adhere to some internal and external policies, procedures, and requirements that can affect successful probation outcomes, particularly for people of color.

Recommendations

To address these findings, we make 14 recommendations to address equity in probation, improve the management and operations of the probation program, and enhance the accountability and transparency of SMC's probation function.

Department Response

In their formal, written response to our report, SMC concurred with the 14 recommendations made in the report. SMC stated that they shared our office's goal of ensuring that SMC probation is not contributing to racial disparities present in the criminal legal system and that probation results in successful outcomes for everyone.

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INTRODUCTION

Audit Overview

This audit was conducted in response to a 2020 Seattle City Council Statement of Legislative Intent (SLI),¹ that directed the Office of City Auditor to review the Seattle Municipal Court's (SMC) probation program. The audit's objective was to assess the impacts of SMC probation on people of color and the racial proportionality of imposing probation, conditions of compliance, and rates of successful completion and early release. As part of this review, we identified gaps in the collection and in the use of Seattle Municipal Court Information System (MCIS) data and recommended filling those gaps and suggested further areas of study. In their response to our report, SMC stated that they concurred with the report's 14 recommendations (see Appendix A).

We thank Presiding Judge Willie Gregory, Probation Director Betty McNeely, and SMC management and staff for their collaboration and transparency on this audit. We also appreciate the cooperation we received from officials from other departments including the Seattle Police Department and the Seattle City Attorney's Office.

Background

SMC probation is court ordered supervision instead of jail or after jail release. In the United States, including Seattle, probation is the most common form of court sentencing that can last years for misdemeanor lower-level offenses. At SMC, probation, which helps to ensure the fulfillment of court ordered obligations,² is the responsibility of the Court Program and Services Division, previously known as Court Compliance. According to SMC, Court Program and Services has, after self-examination and due to a desire to better meet its clients' complex needs, changed and improved its operations.

In 2019, SMC requested that the Vera Institute of Justice (Vera) evaluate its probation services. In its [6/22/2020 report](#), Vera made several recommendations that SMC has implemented. In addition, SMC analyzed SMC's monetary fines and fees,³ which resulted in SMC judges eliminating four discretionary probation related fines

¹ 2020 SLI CJ.1.B.1.

² A **court ordered obligation** is a court condition a judge imposes on individuals in pre-trial status (for stipulated orders of continuances or deferred prosecutions) or during sentencing of cases in which a person is convicted that trigger court supervision by a probation counselor.

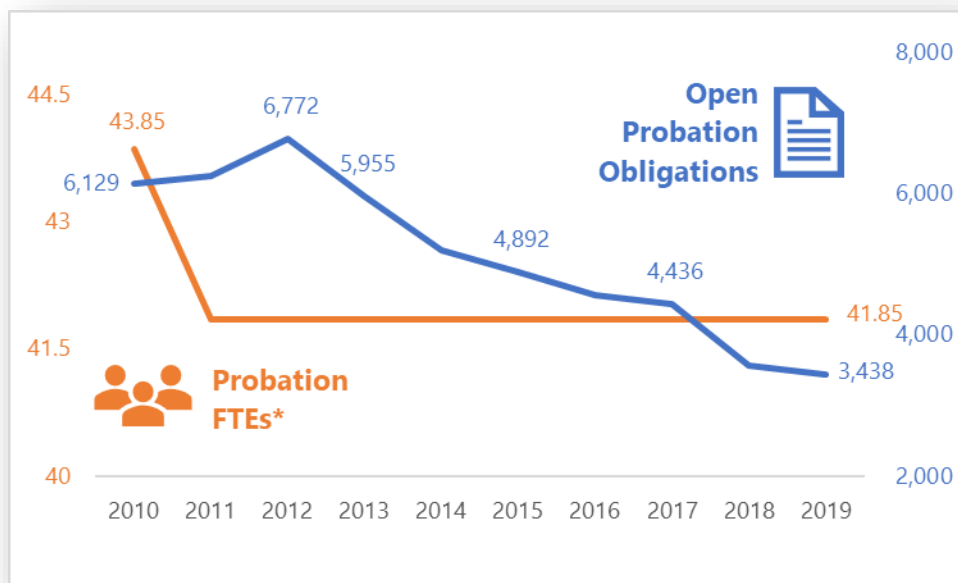
³ Inventory of Criminal and Infraction Fines and Fess at Seattle Municipal Court, SMC Research, Planning, and Evaluation Group (RPEG), 2017 and An Analysis of Court Imposed Monetary Sanctions, in Seattle Municipal Courts, 2010-2017, Alexes Harris, Professor, University of Washington, and Frank Edwards, Assistant Professor, University of Washington, commissioned by the Seattle Office for Civil Rights with assistance from RPEG, July 2020.

and fees to, in part, address inequities in the imposition of court fees. SMC is in the process of replacing its existing information technology system, MCIS, that it uses to document the record of court proceedings and other associated court business. This system is being replaced with one that includes an application to better manage probation cases.

Probation Budget is Reduced After Years of Decreasing Workload

In the City of Seattle’s (City) 2021 Adopted Budget, SMC’s Court Program and Services Division’s budget was cut by 18.4 percent (about \$1.1 million), resulting in the elimination of 12.25 Full-Time Equivalent (FTEs) employees. This cut came in the wake of nearly ten years of declining workload for the Division. As shown in Exhibit 1 below, the number of open court-ordered obligations peaked in 2012 at about 6,800 and then decreased through 2019 to nearly 3,500 obligations. During that same time, the number of probation FTEs remained the same. Reductions in workload were offset by additional probation counselor services rendered to clients, such as enhanced domestic violence interventions, and the State required monitoring of ignition interlocks.

Exhibit 1: SMC Probation Open Obligations Decreased while Probation FTEs Remained Steady from 2010-2019



Source: Office of City Auditor analysis of Seattle Municipal Court data

*2010 FTE were adjusted, for comparison, to reflect a 2011 transfer of the Revenue Recovery and Time Payment units from the Compliance Division to the Operations Division. 2017-2019 does not include non-probation FTEs added to the Division during that period.

SMC's Probation Process

Exhibit 2 is a graphic of SMC's probation process. The probation process is complex and for most people a lengthy one. We added audit report section numbers to the process chart below showing the areas of the probation process where we had findings and recommendations. They include:

Section 1: Demographic Information and Data Gaps

Section 2: Records Checks

Section 3: Risk Assessment Tool

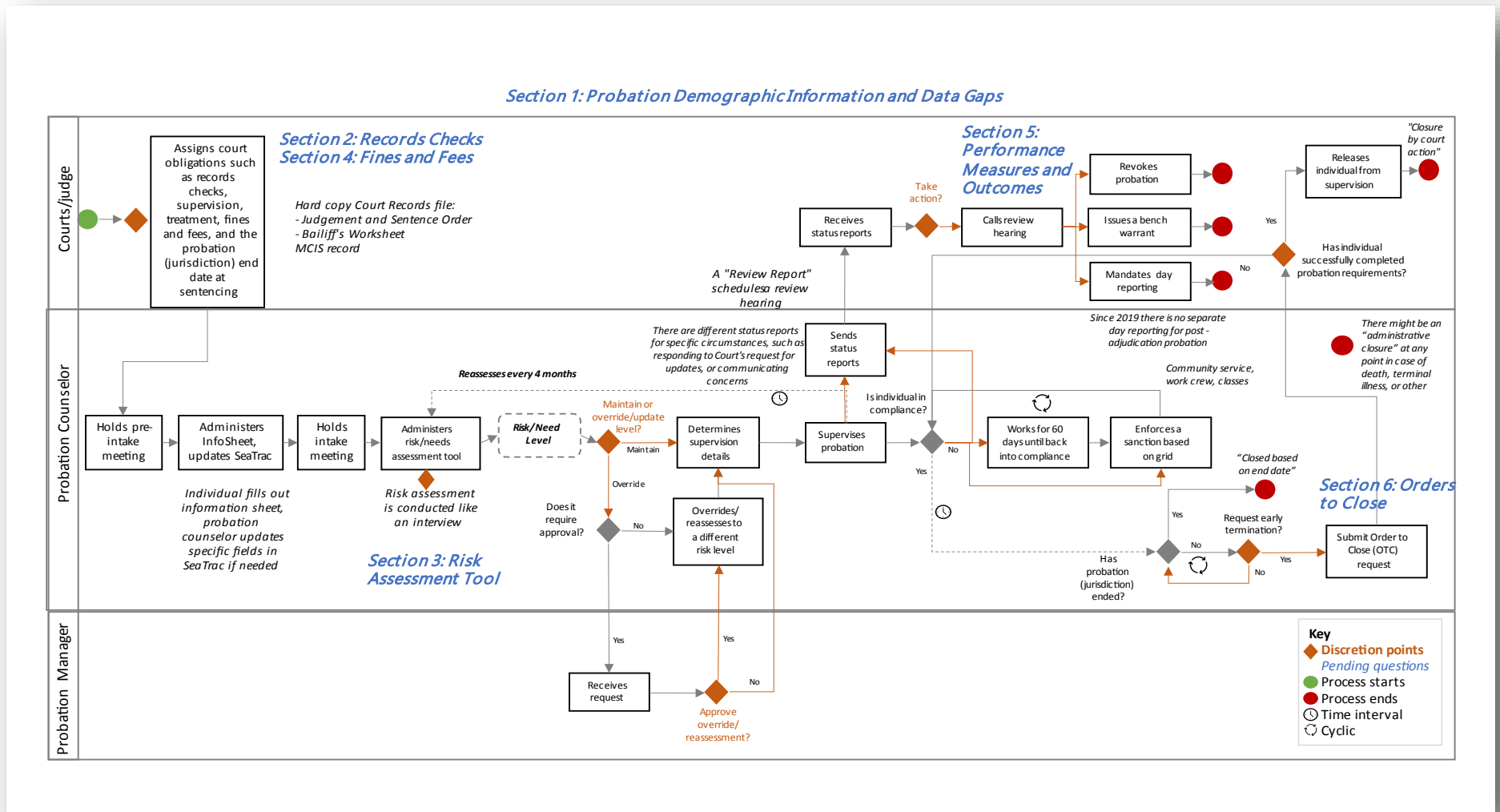
Section 4: Financial Impact of Fines and Fees

Section 5: Performance Measures and Outcomes

Section 6: Orders to Close

Exhibit 2. SMC Post-Adjudication Probation Process for General Probation

Note: This does not include Domestic Violence, Veterans Court or Mental Health Court probation



Source: Office of City Auditor graphic based on Seattle Municipal Court 2019 Probation Policies and Procedures Manual

1. DEMOGRAPHIC DATA GAPS DISTORT EXTENT OF RACIAL AND ETHNIC DISPROPORTIONALITY IN SMC PROBATION PROGRAM

Section Summary

We reviewed 2017-2019 probation data and found the Seattle Municipal Court (SMC) lacked valid and reliable demographic information about people on probation. This limited SMC's ability to identify and resolve issues with disproportionality. SMC obtained incomplete demographic data about court defendants from the Seattle Police Department (SPD) and did not collect demographic data during the pre-trial or probation stages of the criminal court process. The lack of valid and reliable demographic data prevented SMC from adequately assessing, identifying, and addressing racial and ethnic disparities. To address SMC's demographic data weaknesses, we created an updated demographic dataset for the 2017-2019 SMC probation population and compared it to the demographic profile of the Seattle population. Based on this analysis, we found racial disproportionality in the SMC probation population for people of color, particularly for Black/African American individuals.

SMC's Data Issues Make Identifying Race and Ethnic Disproportionality Difficult

Understanding the extent to which the probation program disproportionately impacts people of color and others is challenging because of data issues. We identified these data gaps and deficiencies in SMC's 2017-2019 demographic data:

- SMC used incomplete and inaccurate race data and had no ethnicity data; there was no data on the number of Hispanics/Latinx in the Seattle Municipal Court Information System (MCIS);⁴
- SMC also did not have data on Hawaiians/Pacific Islanders;
- SMC's demographic data could not classify individuals as being of more than one race and ethnicity;
- SMC race categories were not consistent with American Community Survey (ACS)⁵ categories, making proportionality comparisons with other populations difficult; and

⁴ The Office of City Auditor created an updated demographic dataset for the SMC probation population that it used throughout this audit. See Appendix C for how we developed a more accurate and inclusive dataset than existed in MCIS of SMC's Racial and Ethnic 2017-2019 Probation Population.

⁵ The American Community Survey (ACS) is a U.S. Census Bureau demographics survey program that provides information on a yearly basis about our nation and its people, including population estimates by city, race, and Hispanic origin (ethnicity).

- SMC probation counselors did not correct or update demographic data.

Because of these deficiencies, SMC could not ascertain the extent of disparities in its population. Therefore, SMC was less able to identify and implement effective solutions to address these disparities.

SMC Uses Incomplete Demographic Data from the Seattle Police Department

The primary reason for these data deficiencies is that SMC relies on the Seattle Police Department (SPD) for demographic data. SPD collects demographic data during arrests and Terry stops⁶ based on the police officer's perception of the person's race. SPD then downloads race data into a multi-departmental shared system called Seajis. The departments include SMC, SPD, and the Seattle City Attorney's Office. Data SPD officers obtain at the King County Jail may also be entered into the system. SMC then receives race data through the Municipal Court Information System (MCIS).

Gaps in the SPD data decrease the accuracy of the data SMC uses. We determined that the race data SMC provided our office, which originated from SPD, were incomplete and not sufficiently reliable to meet our audit objectives.⁷ We reviewed 3,726 SPD records representing individuals in the probation population from 2017 to 2019. We found that 83 percent of the ethnicity fields were blank or unknown in one SPD dataset, and 74 percent of the ethnicity data fields were blank or unknown in a second dataset. Besides missing and inaccurate data, the racial demographic categories SPD uses are not consistent with the American Community Survey (ACS) categories, which makes comparing SMC demographic data against the City of Seattle demographic data difficult.

The SMC probation intake process could generate improved data that would allow for better oversight of the probation program. An alternative to obtaining data from SPD would be for SMC to collect its own demographic data as part of the probation intake process. Having demographic data collected and verified in probation would be consistent with certain City of Seattle and SMC probation policies and practices. The City's Race and Social Justice Initiative (RSJI) guidelines and a 2014 Executive Order call on departments to document and analyze the diversity of individuals participating in City of Seattle

⁶ In Washington State, *Terry stops* are contacts that involve the stopping and limited detention of an individual.

⁷ The replacement of MCIS will not address the data reliability issues and issues with using the appropriate categories so long as SPD does not address data weaknesses that result from how it collects race and ethnicity data. Addressing the issues with SPD data is beyond the scope of this audit. However, the City Council Statement of Legislative Intent that requested this audit specified that we note areas in Seattle's criminal legal system worthy of further study. SPD's demographic data collection deficiencies would be one such potential area of study.

programs.⁸ We found that forms for individuals assigned to Mental Health Court completed during the intake process already ask demographic questions on race and ethnicity. However, the data collected is not entered into MCIS or SeaTrac, SMC’s probation’s case management system, and is not analyzed for program management purposes. SMC also collects demographic information from individuals at intake who visit the SMC Community Resource Center (CRC).⁹ The CRC collects demographic information on its visitors, but because not all individuals assigned to probation visit the CRC, this would not be an appropriate place for SMC to collect demographic information for the probation program.

Recommendation 1

The Seattle Municipal Court should update the Municipal Court Information System demographic data by obtaining self-identified race and ethnicity data from its probation clients during probation administrative processes.

Gender Data Gaps

SMC also lacked valid and reliable demographic data to understand the extent of gender disparities. Demographic data that SMC obtains from SPD are limited to female and male, gender is recorded based on the officer’s observation, and there is no data on gender or the spectrum of genders (e.g., nonbinary, genderqueer, etc.). This can prevent SMC from adequately identifying and addressing the needs of individuals and from assessing disparities that may exist.

Recommendation 2

The Seattle Municipal Court should update the Municipal Court Information System demographic data by obtaining self-identified gender data from its probation clients during probation administrative processes.

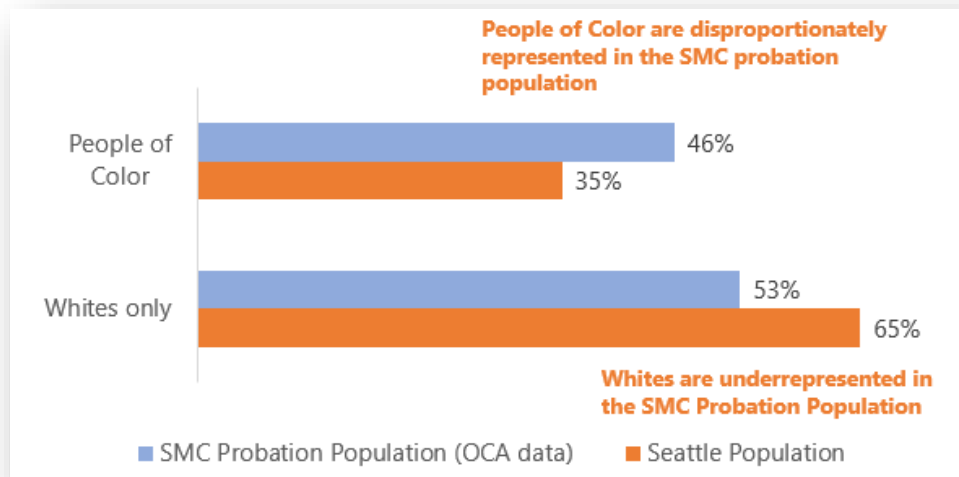
Better Data Show that People of Color are Disproportionately Overrepresented in the SMC Probation Population

Because the SMC data are not sufficiently reliable, we developed an updated race and ethnicity dataset (See Appendix C) for the 2017-2019 probation population and found that **people of color were disproportionately overrepresented** in the SMC probation population. Exhibit 3 shows that while people of color represented 35 percent of Seattle’s population, they represented 46 percent of SMC’s probation population. The proportion of Whites in the SMC probation population was smaller than their share of the Seattle population by 12 percentage points. Whites represented 65 percent of the Seattle population and 53 percent of the probation population.

⁸ Executive Orders are applicable to City of Seattle executive branch departments and as a separate branch of government (i.e., judicial), the Seattle Municipal Court is not required to adhere to them.

⁹ The Community Resource Center provides on-site “wrap around” social services to Seattle Municipal Court clients in different stages of the criminal legal process to help ensure their compliance with Court commitments and obligations.

Exhibit 3: People of Color are Disproportionately Represented in the 2017-2019 Probation Population Compared to their Percentage in the Seattle Population



Source: Office of City Auditor graphic of Seattle Municipal Court data

Four Groups are Overrepresented in the Seattle Probation Population

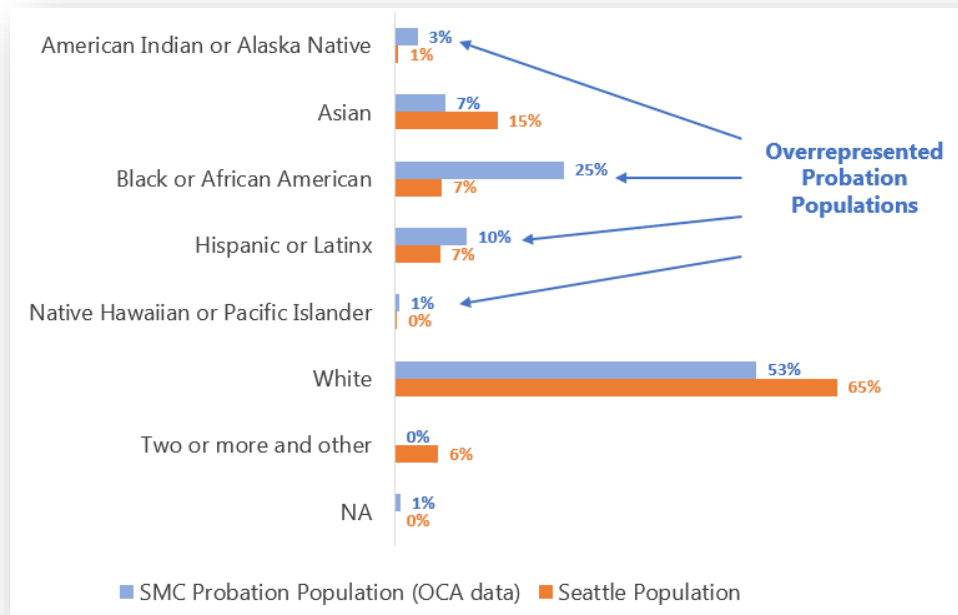
Black/African American, Hispanic/Latinx, and American Indian or Alaskan Native, and Native Hawaiian/Pacific Islanders are disproportionately overrepresented in the probation population.

Black/African American individuals had the largest disparity between their representation in the 2018 Seattle population at seven percent compared to their representation in the 2017-2019 probation population which was 25 percent. We also found that American Indian/Alaska Natives, Hispanic/Latinx, and Native/Hawaiian/Pacific Islanders were represented at a higher proportion in the 2017-2019 SMC probation population than they were represented in the Seattle population.¹⁰ Conversely, Asians and Whites were represented in the SMC probation population at a proportion lower than they were represented in the Seattle population. While Asians constitute 15 percent of the Seattle population, they were seven percent of the probation population. Whites represented 65 percent of the Seattle population and 53 percent of the probation population. Exhibit 4 compares the proportion of people in each race and ethnicity category

¹⁰ The populations of Native Hawaiians or Pacific Islanders and American Indian or Alaska Natives is small, rounding to zero in the 2018 ACS estimates for the City of Seattle and one percent in our updated dataset. In addition, the confidence interval in Exhibit 4 indicates that we can be 95 percent confident that the difference between the proportion of Native Hawaiians or Pacific Islanders and American Indian or Alaska Natives on SMC probation and in Seattle is between 0 and 1 percent, which means that this difference is statistically significant, although the populations are small.

in the 2017-2019 SMC probation population to the proportion of that category in the 2018 Seattle population.¹¹

Exhibit 4: Four Racial/Ethnic Groups are Disproportionately Represented in the Seattle Probation Population



Source: Office of City Auditor graphic with updated race and ethnicity data and American Community Survey 2018 Data
Note: Not reflected in the graphic is one percent of the SMC probation population with missing race and ethnicity data.

The SMC Probation Program has not been Reviewed through the City’s Racial Equity Toolkit to Address Disparities

The City’s Race and Social Justice Initiative (RSJI) calls on all City of Seattle departments to eliminate racial disparities to achieve racial equity. In probation that means the percentage of the probation population by race and ethnicity would be similar to their percentage of the population in the City of Seattle. SMC has evaluated some of its programs with an equity lens, such as in determining which probation fees to eliminate, but it has not used the City of Seattle’s Racial Equity Toolkit to analyze its probation program. SMC’s ability to collect accurate race and ethnicity data (See Recommendation 1 above) will be key to identifying racial equity areas of focus and potential solutions for addressing racial and ethnic disproportionalities. While racial and ethnic disproportionalities in SMC’s probation population did not originate within the probation

¹¹ The sources of race and ethnicity data for individuals on SMC probation did not use the exact same categories as the U.S. Census and we were thus not able to compare the six percent of people in Seattle who identify with “two or more races” or “other race” to the SMC probation population.

function and result from systematic racism in the criminal legal system due to arrest, prosecution and conviction decisions made outside of probation, racial and ethnic disproportionality persists in different elements of the probation program. Having a probation system that treats people of color worse than Whites perpetuates a racist system. Sections 3, 5, and 6 of this report document racial disparities that exist in various elements of the SMC probation program. Therefore, a racial equity analysis will help SMC ensure that its probation program and practices do not perpetuate or exacerbate racially disparate outcomes.

RSJI also calls for departments to proactively engage with community members, organizations and stakeholders working to achieve racial justice equity. Without a racial equity analysis to help determine the most urgent issues and most disproportionately affected communities, SMC will have difficulty identifying and engaging with the appropriate communities. The Director of the City's Office for Civil Rights stated in the cover memo of the [2020 Seattle Municipal Court Monetary Sanctions Report](#) that "We (the City of Seattle) must work with communities most impacted by our criminal legal system to evaluate the role of our Court and prosecutors in conjunction with our discussions around policing to avoid unintended consequences and missed opportunities as we build a public safety approach that is just, safe, and equitable for all communities in our city."

Recommendation 3

The Seattle Municipal Court (SMC) should perform a Racial Equity analysis on its probation program. The racial equity analysis should specify how SMC intends to address and report on its progress towards eliminating disproportionalities within the probation program, including how it intends to involve communities of color that are disproportionately represented in probation.

2. SMC NOT CLASSIFYING RECORDS CHECKS MONITORING AS PROBATION RESULTS IN UNDERCOUNTING THE EXTENT OF COURT SUPERVISION

Section Summary

At any given time, SMC is monitoring the criminal history of hundreds of individuals yet does not consider these people to be on probation. As a result, SMC performance data provides an inaccurate picture of the activities SMC is engaged in and conceals the impacts on individuals of those monitoring activities. This ongoing monitoring, called **records checks**,¹² is an activity during which SMC staff periodically review criminal records to see whether an individual has committed any new crimes anywhere in Washington State or in the United States if the individual is known to live out of state. According to SMC, from 2017-2019 about 1,100 individuals were monitored for records checks.

Records Checks is a Form of Probation Monitoring

Experts like the Vera Institute of Justice say that ongoing monitoring of criminal history is a form of probation and can extend the length of time individuals remain on probation.

However, SMC does not consider records checks as probation because the activity is performed by SMC administrative staff and volunteers rather than probation counselors. SMC interprets probation as a post-adjudication jail alternative in which its counselors help ensure that their clients meet court ordered obligations. According to SMC, probation is an opportunity for clients to meet with and engage with counselors to access services and address underlying needs. However, language in the Washington State Administrative Rules for Courts of Limited Jurisdiction (ARLJ11) suggests that records checks can be considered a probation activity, even though the records checks are not done by probation counselors.

Not counting records checks as part of SMC probation underestimates the extent to which individuals are being monitored and the impact of that monitoring. As noted in the previous paragraph, the 2020 Vera Institute of Justice report classified an individual monitored only by records checks as being on “inactive

¹² According to SMC, a records check is a check on an individual’s criminal record, which in some instances is required by statute.

probation status.” If an SMC records check finds that an individual violated a no new criminal convictions obligation, this could lead to the imposition of additional obligations. In other words, a records check finding could lead to additional consequences unrelated to the original conviction.¹³

Recommendation 4 **The Seattle Municipal Court should include records checks as a distinct activity in its definition of probation services.**

Recommendation 5 **The Seattle Municipal Court should include information on records checks in its management data system so it can regularly assess and report on the impact of records checks on individuals.**

SMC Should Assess All Forms of Monitoring for Impacts on People of Color

There may be other activities that SMC is engaged in that, like records checks, are having similar negative impacts on people, such as exposing them to ongoing and unnecessarily burdensome court monitoring. During our audit, we discovered other SMC monitoring activities that SMC considered administrative functions because court clerks, not probation counselors, handle them but which could cause extended Court monitoring. Examples of these activities include ignition interlock¹⁴ devices and community service. A comprehensive review of these activities was beyond the scope of this audit. However, given the potential for a negative impact of lengthy Court supervision on individuals subjected to these activities, a review of the impacts of these forms of monitoring, especially on people of color, is warranted.

Recommendation 6 **The Seattle Municipal Court should conduct and document an internal review of the activities involving monitoring not currently in its definition of probation to determine if these activities are having unintended negative impact on people of color.**

¹³ Keeping individuals on extended records checks status increases their risk of failing to comply with court conditions. The 2020 Vera report noted that “long terms on community supervision can expose even people who are compliant to possible revocation. For example, two to five years of any of the following conditions—needing permission to move, travel, or get a driver’s license; refraining from drinking alcohol; or having to report regularly— might lead anyone to violate the rules at some point. Non-compliance with any one condition is theoretically grounds for a violation and could result in revocation, potentially resulting in a loss of all earned credit for the time clients lived in the community without violations.”

¹⁴ An ignition interlock device is a breathalyzer for an individual’s vehicle requiring the driver to blow into mouthpiece on the device before operating the vehicle.

3. SMC'S RISK/NEEDS ASSESSMENT TOOL MAY FURTHER DISPARITIES FOR SOME GROUPS

Section Summary

The Seattle Municipal Court probation program has used an assessment tool for over 20 years known to be biased against people of color, to help determine the type of probation supervision an individual should receive. SMC data on the results of the assessment tool for its 2017-2019 probation population shows that American Indian/Alaskan Natives and Blacks/African Americans were overrepresented in the most intrusive types of supervision, which require in-person contact with probation counselors, but were underrepresented in the less intrusive types of supervision done via phone calls or emails. In person-contacts with probation counselors occur at the Seattle Justice Center building in downtown Seattle, which can impose an additional burden on some individuals navigating other obligations such as jobs or children. SMC officials have acknowledged the assessment tool's racial bias and SMC is working to replace it.

Risk/Needs Assessment Tools Background

What is a Risk/Needs Assessment Tool?

Risk/needs assessments tools are used in the criminal legal system to determine the likelihood of an individual's future risk to reoffend and to help identify target interventions such as court supervision. At SMC, the assessment tool is also used to determine one of three levels of probation supervision. The highest and most intrusive level of supervision, Level 1, requires in-person reporting with a probation counselor, and Level 2 involves phone calls, emails, or use of an interactive voice monitoring (IVR) system. Level 3 requires no contact with a probation counselor, while a probation obligation or condition remains open. Exhibit 5 below provides information about the three levels of supervision at SMC.

Exhibit 5: Three Types of Probation Supervision that Result from the Use of SMC’s Risk/Needs Assessment Tool

Level	Supervision Type	Level of Intrusion
1	In-person reporting	Most Intrusive
2	Phone, email, or IVR	Intrusive
3	No contact	Least Intrusive

Source: Office of City Auditor graphic based on Seattle Municipal Court 2019 Probation Policies and Procedures Manual

Why Does SMC Probation Use a Risk/Needs Assessment Tool?

The State of Washington’s Administrative Rules for Courts of Limited Jurisdiction requires SMC to use an assessment tool to determine the risk of an individual reoffending. These rules state that courts must “determine their risk to the community using a standardized classification system with a minimum of monthly face to face interviews for offenders classified at the highest level.” To meet this requirement, SMC uses the Washington Misdemeanant Corrections Assessment, which is based on the Wisconsin Department of Corrections Risk Needs Assessment Instrument (see [assessment tool](#)).

How Does SMC Use the Risk/Needs Assessment Tool?

SMC probation counselors administer the assessment tool at the probation intake meeting to individuals with certain convictions, such as a judge-imposed probation condition. The assessment tool classifies individuals into one of three categories (Levels 1, 2, and 3). Based on assessment results, probation counselors then assign individuals to one of these three levels of supervision. SMC created additional categories of probation supervision for special circumstances.¹⁵

¹⁵ Some individuals may be assigned to a level of probation based on other factors when the tool is not used, or probation counselors override the results of the tool.

Results of Assessment Tool Data Analysis

SMC’s Use of Their Assessment Tool Results in Blacks/African Americans and American Indian/Alaska Natives Being Overrepresented in the Most Intrusive Form of Supervision

Data show that SMC’s use of the assessment tool adversely affects two groups by assigning them to the most intrusive form of probation supervision: **Black/African Americans and American Indian/Alaska Native**. We found that when the tool was used, Black/African Americans and American Indian/Alaska Natives were more likely than others to receive the most intrusive forms of probation supervision. As shown in Exhibit 6 below, there were three percent more Black/African Americans in the most intrusive form of supervision, and about ten percent (eight to eleven percent) fewer Black/African Americans in the two less intrusive levels of supervision than their share in the probation population. This contrasts with Whites, who are underrepresented in the most invasive forms of probation, and overrepresented in the less invasive levels of supervision.

Assessment Tool Results for Other Groups

We also found that the percentage of Hispanics/Latinx did not change from Level 1 (in-person reporting) to Level 2 (phone, email, IVR reporting) and increased in Level 3 (no contact) by seven percentage points, while two groups (Asians and Native Hawaiian/Pacific Islanders), were represented at proportionality or near proportionality in the probation population at all three levels.

Exhibit 6: Two Groups are Overrepresented in the Most Intrusive Form of Supervision and Whites are Underrepresented

Level	Overrepresented Groups % <u>more</u> than the group’s share of the probation population	Underrepresented Groups (% <u>less</u> than the group’s share of the probation population)
1 In-person	Black/African American 3% American Indian/Alaskan Native 2%	White (5%)
2 Phone, Email, IVR	White 10%	Black/African American (8%) American Indian/Alaskan Native (1%)
3 No contact	White 6%	Black/African American (11%) American Indian/Alaskan Native (2%)

Source: Office of City Auditor graphic of Seattle Municipal Court data

SMC Used a Risk/Needs Assessment Tool Known for Bias and Other Issues

SMC was aware of the inherent racial bias in the assessment tool it used. Two SMC officials we spoke with said that the assessment tool SMC used was inherently biased, and their statement matched what recent critiques published elsewhere concluded. Recent research suggests that assessment tools can result in disparate racial outcomes. For example,¹⁶ risk assessment tools can score individuals based on factors that may not be relevant to the current crime. Instead, some risk assessment tools measure factors related to a person's privilege (i.e., housing stability, education, employment, relationships, and arrest record). These tools can result in the increased likelihood of someone being given a more invasive form of probation.

In 2021, SMC initiated a process to replace its assessment tool. According to an SMC official, SMC has selected two assessment tools that it is piloting and is considering a third tool to replace the current tool based on which one is the least harmful to equity. SMC plans to have the new tools in place by the end of 2021. As called for in the City's RSJI policies, it would also be beneficial for SMC to enlist the input of City and community stakeholders and leading subject matter researchers in the acquisition and implementation of its risk assessment tools.

Recommendation 7

The Seattle Municipal Court should engage with communities of color, City stakeholders, and subject matter researchers about the replacement and implementation of its risk assessment tools.

SMC Could Improve the Implementation of its Assessment Tools

In addition to racial bias issues concerning SMC's risk assessment tool, we identified issues with the assessment tool's implementation. For example, SMC made custom modifications to its risk assessment tool. Making modifications to a validated risk assessment tool can potentially reduce that tool's predictive ability and compromise its validity. In addition, we found that the policy of when not to administer the assessment was not clear in SMC's Probation Policies and Procedures manual. We also found that 32 percent of SMC's records had been assigned a probation level without a risk assessment being performed.

The Center for Court Innovation has identified principals for successful implementation of a risk assessment tool including collaborating with researchers¹⁷ to ensure that methods for assessing risk are appropriate and unbiased and prioritizing transparency when

¹⁶ See for example, [Demystifying Risk Assessment Key Principals and Controversies, Center for Court Innovation, 2017.](#)

¹⁷ For example, San Francisco Probation is currently working with researchers from University of California Irvine to examine racial disparities in risk assessment.

selecting a tool to safeguard the assessment process from potential racial bias. These principles can be helpful to SMC as they continue to evolve their approach to risk assessment.

The choices that SMC will make about implementing its new risk assessment tools could also have consequences that affect the effectiveness and equity outcomes of those tools. Appendix D presents the framework we used to assess the implementation of SMC's risk assessment tool. The framework included four criteria: anti-bias, relevance, validity, and application in terms of consistency and transparency.

Recommendation 8

The Seattle Municipal Court should review its implementation practices for its new risk assessment tools to ensure they are consistent with the four criteria of anti-bias, relevance, validity, and consistent and transparent application.

4. SMC'S ECONOMICALLY VULNERABLE PROBATION POPULATION IS SUBJECTED TO FINES AND FEES

Section Summary

While SMC eliminated some discretionary probation fees in 2020, more work needs to be done to ensure the economically vulnerable probation population is not further burdened by fines and fees. Although SMC suspends and waives most fines and fees¹⁸ it imposes on individuals, imposing them on individuals who cannot afford to pay them can hinder their rehabilitation and reintegration into society after conviction. Nearly 70 percent of the 2017-2019 SMC probation population qualified for a public defender and were categorized as indigent. Therefore, court fines and fees of any amount are particularly burdensome for this population.

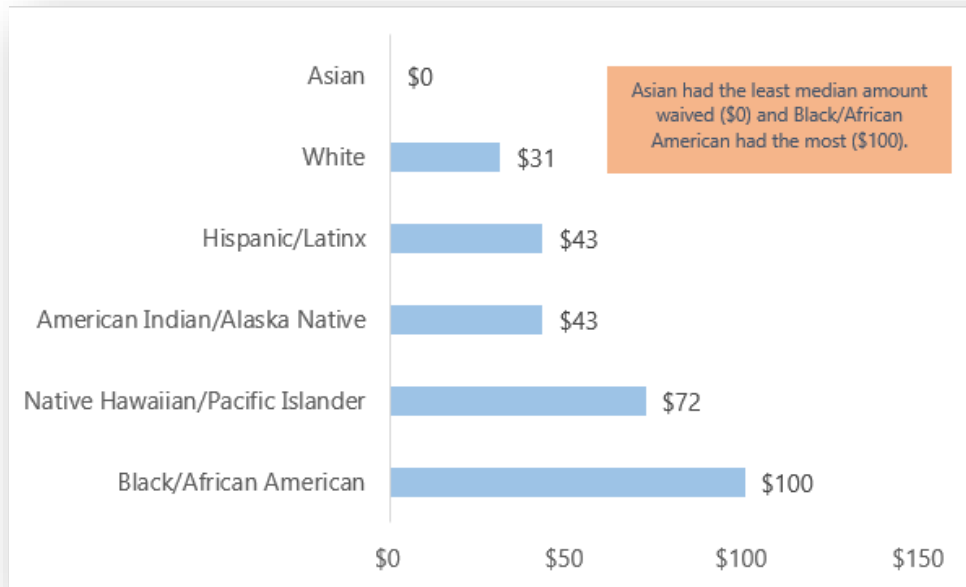
SMC Waives or Suspends Most Fines and Fees it Imposes

SMC suspends and waives most fines and fees it imposes, and some groups appear to generally have more of their fines and fees reduced than others. We analyzed case fine and fee suspensions and waivers of SMC's 2017-2019 probation population and found that of the nearly \$15.5 million in fines and fees SMC imposed on the probation population, about \$13.3 million (86 percent) were suspended or waived. While 86 percent of the fines and fees are waived or suspended, because most racial and ethnic groups in the SMC's probation population experience high rates of indigency or homelessness, any fees or fines they must pay can be a financial burden. Because the data showed extreme outliers (i.e., SMC imposed large or small fees on some people), the average amounts waived and suspended provided a skewed picture of what is generally happening to people in the probation population. Therefore, we report on the median amount waived or suspended per case. We found that while the number of individuals with financial obligations (obligations with fine and fee amounts) were imposed proportionately to each groups' probation population, Black/African Americans generally had the highest median suspended or waived amount (\$100) and Asians had the least (i.e.,

¹⁸ Criminal **fines** are monetary penalties imposed on individuals as part of conviction sentences as deterrence and punishment. **Fees** are costs, assessments, or surcharges imposed on individuals as "users" of the court often used to fund the criminal legal system. Matthew Menendez and Lauren-Brooke Eisen, *The Steep Costs of Criminal Justice Fees and Fines*, Brennan Center for Justice, November 21, 2019. Fines and fees can be statutorily required or imposed at the court's discretion.

half of the time no fees were waived for this group) as shown in Exhibit 7 below.

Exhibit 7: Median Amounts SMC Waived and Suspended by Race and Ethnicity Range from \$0 to \$100 per Case



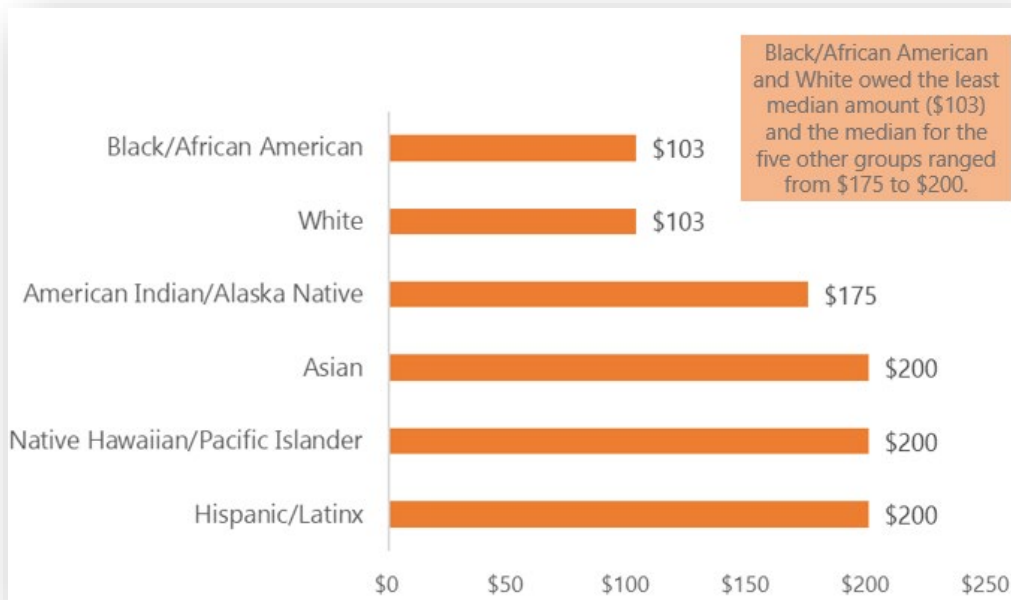
Source: Office of City Auditor graphic of Seattle Municipal Court data

After Fines and Fees are Reduced, Some Groups with High Rates of Indigency Pay More than Other Groups

Although a lot of fines and fees are waived, people are sometimes required to pay some amount and some groups with high indigency status rates among the probation population pay more than other groups. After the Court applies waived and suspended amounts, when people must pay a fine or fee, they generally pay \$200 or less per case, but there is variation by race and ethnic group. We used the median to get a general idea of what people pay because the averages are skewed by extreme values. While some people pay nothing after waived and suspended amounts are applied, in some extreme cases, people pay over \$15,000.¹⁹ Hispanic/Latinx, and Native Hawaiian/Pacific Islanders, whose probation population indigency rates were over 50 percent, and Asians owed the most, while the other three groups owed less. Black/African Americans and Whites had the lowest median owed of \$103. See Exhibit 8 below.

¹⁹ Two individuals paid over \$15,000, which included restitution.

Exhibit 8: Median Amounts Ultimately Owed by Race and Ethnicity Range from \$103 to \$200

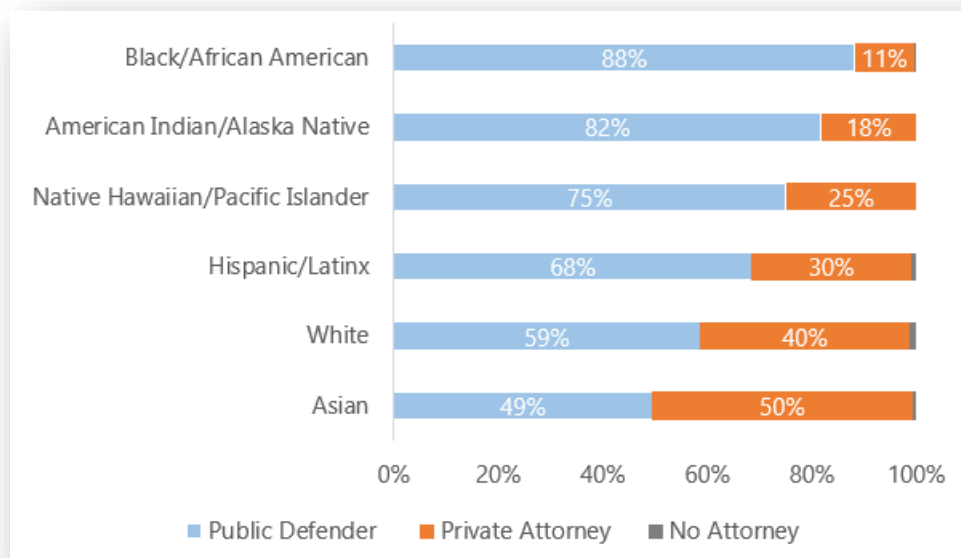


Source: Office of City Auditor graphic of Seattle Municipal Court data

SMC Should Continue its Work to Eliminate Discretionary and Administrative Fines and Fees Due to the Large Number of its Probation Population Experiencing Indigency and Homelessness

Imposing fines and fees may hinder the reintegration and rehabilitation goals of probation programs. Some racial and ethnic groups within the 2017-2019 SMC probation population, who must pay court fines and fees, are disproportionately homeless and/or have qualified for indigency status at higher rates compared to their representation in the probation population. While Blacks/African Americans represented 25 percent of the probation population, they represented 35 percent of individuals facing homelessness and 33 percent of individuals with indigent status with fines and fees. In examining the percentage of indigency status within each racial group, as shown in Exhibit 9 below, we found that most individuals on probation with fines and fees were indigent. Specifically, 88 percent of the Blacks/African Americans on probation with fines and fees were experiencing indigency, followed by 82 percent of American Indian/Alaska Natives. Asians were the only group with less than 50 percent experiencing indigency. Therefore, regardless of the fines and fees imposed and waived, they will be burdensome for most of SMC’s probation population.

Exhibit 9 Most of SMC 2017-2019 Probation Population is Represented by A Public Defender because of Indigent Status



Source: Office of City Auditor graphic of Seattle Municipal Court data

In 2020, the City of San Francisco eliminated all administrative court fines and fees. In 2020, to promote equity SMC also eliminated four fees related to probation. However, SMC did not use the City of Seattle’s Racial Equity Tool (RET) assessment to determine which fees to eliminate as called for in Executive Order 2014-02, which dictates using a RET in all City of Seattle program and planning processes. By not applying a RET to help it determine which fines and fees to eliminate, SMC may not identify other fines and fees that lead to results that are out of step with the City’s race and social justice goals.

We identified other discretionary administrative fees that SMC should consider eliminating because the fees are unrelated to the crime and are not initiated by a judge. These fees may be burdensome for those least able to pay and are counter to the goals of SMC’s probation efforts. These fees include but are not limited to the time payment set up fee, copy fee, and fees coded with “collection interest.”

Recommendation 9

Given that in September 2021, the Seattle Municipal Court (SMC) will have one year of data for its new fine and fee structure, SMC should continue to examine the purpose and outcomes of its fines and fees and apply the City of Seattle Racial Equity Toolkit to eliminate discretionary and administrative fines and fees that

have an adverse impact on the most vulnerable segments of the probation population (e.g., individuals who qualify for indigent status).

**We found
Inconsistencies and a
Lack of Internal
Controls on How SMC
Applies and Tracks
Fine and Fee Waivers
and Suspensions**

We found that SMC does not apply and track fine and fee waivers and suspensions consistently and needs to be more transparent when granting them. During our review of SMC 2017-2019 probation data on financial obligations, we noticed several instances when a financial obligation amount was waived or suspended, but the amount waived or suspended was not documented in the data. Specifically, we found inconsistencies in how SMC uses its discretion to waive and suspend fines and fees as well as in the coding and tracking of such waiver and suspension amounts, how corrections to fines and fees were applied and tracked, and a lack of internal controls. SMC officials stated inconsistencies could be from applying a suspended obligation when a person has qualified as indigent rather than applying the indigent code – which would not appear as a financial obligation. According to an SMC official, some discrepancies concern SMC’s outdated MCIS data system and some concern how judges code their actions. Without adequate internal controls, accurate, consistent, and verifiable record keeping, the financial impacts of fines and fees cannot not be determined with confidence and issues of inequity, if present, cannot be fully addressed.

Recommendation 10

Seattle Municipal Court should establish internal controls to ensure waived and suspended fines and fees are properly applied and documented.

5. SMC'S LACK OF INFORMATION ON PROBATION OUTCOMES BY RACE AND ETHNICITY LIMITS ITS ABILITY TO ADDRESS DISPROPORTIONALITY

Section Summary

During our audit, we found that SMC did not have probation performance measures and that it did not measure probation outcomes. Although SMC recently began reporting on probation caseload and on closed cases, and as of August 1, 2021, had started to track performance measures by race, more work needs to be done. The City's Race and Social Justice Initiative calls for analyzing data to develop strategies for greater racial equity outcomes. Allowing for outcomes by race and ethnicity to remain unexamined means that disproportionality or potential disproportionality will persist within a criminal legal system embedded with discrimination and racism. We analyzed 2017-2019 SMC probation data to determine probation successful and unsuccessful outcomes by race and ethnicity and found racial and ethnic disproportionality in successful and unsuccessful terminations.

Closed Obligations Can be Used to Measure Successful and Unsuccessful Outcomes

To determine if there was racial proportionality in probation termination outcomes in terms of whether probation was **successful** (e.g., defendant met court obligations) or **unsuccessful** (e.g., defendant failed to appear for probation resulting in a warrant), we examined termination data as a proxy for outcomes. We reviewed the outcomes of SMC closed (terminated) cases for the 2017-2019 probation population. As Exhibit 10 below shows, **59 percent of probation obligations were successfully completed**, while **35 percent were unsuccessful closures**. Unsuccessful closures include terminations due to a revocation (technical violation, new criminal offense, or both) and stricken closures with no revocation or consequence, which generally occurs when a person goes on warrant status (due to missing a court date, treatment appointment or probation counselor meeting). The remaining six percent of terminations had "other" reasons for the closure, including cases that should not have been probation in the first place (appealed or assigned in error), or cases when the person died or probation was removed (tolled) from probation due to competency reasons, meaning the court deemed the individual not competent to complete the probation obligation.

Exhibit 10: Most Probation Obligations are Successfully Completed

Closure Reasons	Total	%
Successful	980	59%
Completed all conditions and obligations	780	47%
Closed by jurisdiction	188	11%
Substantially completed without new offense	8	0%
Substantially completed with new offense(s)	4	0%
Not successfully terminated	583	35%
Revoked - technical	313	19%
Revoked - technical and new offense(s)	142	9%
Stricken - no revocation or consequence	102	6%
Revoked - new offense(s)	26	2%
Other closure	92	6%
Probation tolled-competency issues	58	4%
Client died	18	1%
Defendant assigned to probation in error	10	1%
Appealed	6	0%
Total	1,655	100%

Source: Office of City Auditor analysis of SMC data

Race and Ethnic Disproportionality Exists in SMC Probation Termination Outcomes

We found racial disproportionality in probation termination outcomes. Our analysis of 2017-2019 SMC probation data shows some race and ethnic groups appear to have had higher successful termination outcomes than others. As shown in Exhibit 11 below, White, Asian, and to some extent American Indian/Alaska Native individuals are represented among successful closures at a higher rate and are represented among unsuccessful terminations at a rate lower than their share of in the SMC probation population. White individuals are 53 percent of the probation population, but they are 55 percent of those with a successful termination, and only 45 percent of those with an unsuccessful termination. Conversely, Black/African American individuals are 25 percent of the probation population but represent 37 percent of unsuccessful terminations and only 21 percent of those with a successful termination.

Exhibit 11 Racial/Ethnic Disproportionality Exists in Probation Termination Outcomes for Some Groups

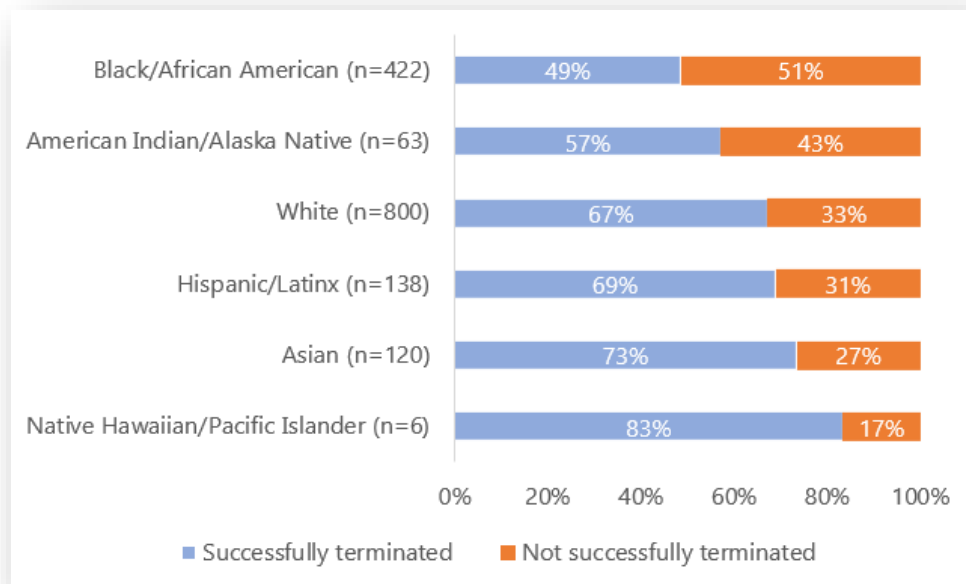
Race/Ethnicity	Successful	Not successful	SMC Probation
American Indian/Alaska Native	4%	5%	3%
Asian	9%	5%	7%
Black/African American	21%	37%	25%
Hispanic/Latinx	10%	7%	10%
Native Hawaiian/Pacific Islander	1%	0%	1%
White	55%	45%	53%

Source: Office of City Auditor analysis of Seattle Municipal Court data

Black/African American was the only Group with More Unsuccessful Outcomes than Successful Outcomes

Most (51 percent) of the outcomes for Blacks/African Americans were unsuccessful. As shown in Exhibit 12 below, within each race and ethnicity, Blacks/African Americans had the lowest percentage of successful outcomes and largest percentage of unsuccessful terminations, followed by American Indian/Alaska Natives. Native Hawaiian/Pacific Islander, Asian and Hispanic/Latinx had a higher percentage of successful terminations than Whites.

Exhibit 12: Over Half of Black/African Americans had Unsuccessful Terminations



Source: Office of City Auditor analysis of Seattle Municipal Court data

SMC’s New Information System to Provide Currently Lacking Probation Performance Measures Information

SMC lacked the tools necessary to track and report on the outcomes of its probation program, which inhibited its ability to address racially disparate outcomes. During our review of the SMC probation program, we found no measures of performance. For example, there were no probation related performance measures on SMC’s performance website.²⁰ We subsequently requested performance measures and SMC probation management confirmed they were limited for probation, in part because of the limitations with SeaTrac, SMC’s probation case management system. While tracking termination outcomes will not resolve disproportionality, it will provide SMC the needed data to inform its priorities, decisions, and policies. Implementing the new court information system, which will include a module for probation, will provide the opportunity to implement and report probation performance measures. Examining outcomes by race and ethnicity will bring SMC into compliance with the City of Seattle’ Race and Social Justice Initiative, which calls on City department to analyze data to reduce race and ethnic disproportionalities and achieve equitable outcomes.

²⁰ As of March 2021, SMC’s website was modified to include caseload and closed case data; but did not include measures by race/ethnicity.

Recommendation 11

The Seattle Municipal Court should ensure that its new information technology system can monitor and report on probation outcomes and impacts by race and ethnicity and other demographic populations.

6. FAILING TO FILE ORDERS TO CLOSE WHEN INDIVIDUALS HAVE MET OBLIGATIONS CAN EXTEND PROBATION

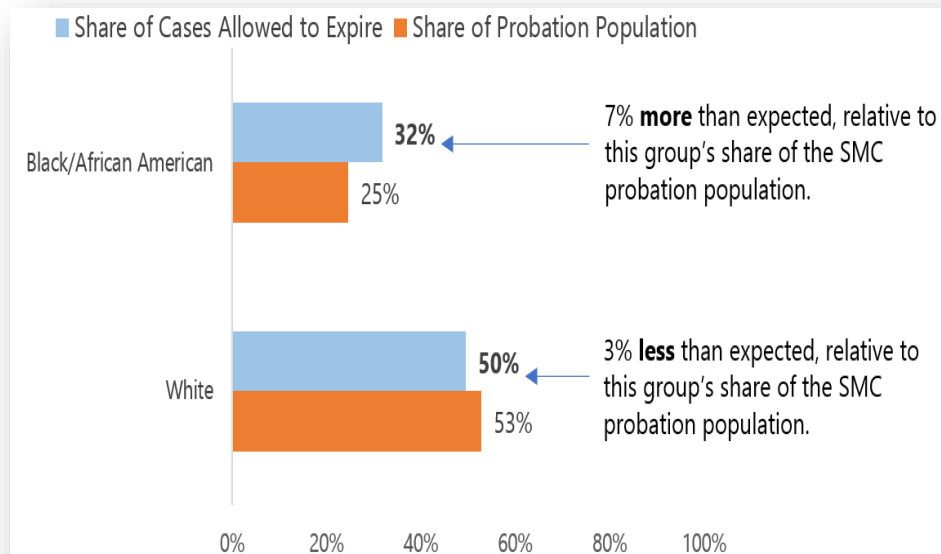
Section Summary

During the audit we found SMC probation counselors used their discretion to recommend to judges that they close probation early (before the probation end date Judge's assign during sentencing) for individuals. In these cases, judges can "order to close" or end the remaining probation time. Our analysis of probation closure data showed that neglecting to recommend an order to close after individuals complete court obligations can cause years of extended probation. In November 2020, SMC implemented a new case closure policy. SMC will need to implement internal controls to ensure the goals of this policy are achieved.

Blacks/African Americans Experience Extended Probation Due to Failure to Submit Reports to End Probation

When SMC probation counselors fail to file reports necessary for judges to end probation, after individuals complete court obligations, it can lead to years of ongoing monitoring, especially for Blacks/African Americans. In our review of 2017-2019 probation data, we found that Blacks/African Americans are overrepresented in the share of individuals whose cases remained open until the probation end date, while Whites were overrepresented in cases that closed earlier than the probation end date. See Exhibit 13 below.

Exhibit 13: Unlike Whites, Blacks/African Americans are Overrepresented in the Population of Cases that Close at the End Date



Source: Office of City Auditor analysis of Seattle Municipal Court data

When probation counselors do not file a court report recommending early closure (closure before the probation end date), a person’s case can remain open for months or years and could lead to unnecessarily burdensome Court monitoring.²¹ SMC Probation counselors file the report, called **orders to close recommendations**, for judges to review and officially complete the closure process. Our analysis showed that when a probation counselor does not close a case, even after an individual has met all court obligations or conditions of probation, it can languish until the case’s end date, which is two to five years from the case start date. We found that cases which remained open until they expired lasted an average of 438 days longer than cases closed when obligations were completed.

We found that the reason that SMC staff had not consistently submitted orders to close was a lack of clear direction to do so. In November 2020, SMC revised its policy for case closure to allow for administrative closure of cases when obligations have been met. The policy applies only to certain types of cases (e.g., deferred sentences and some DUI cases) and needs clarification on the process to close other types of cases when individuals have met all their obligations.

²¹ We describe one type of ongoing monitoring, called **records checks**, starting in Section 1 of this report.

In addition to clarifying the policy, it will be helpful to implement internal controls to ensure that the policy is properly and consistently applied. According to [GAO's Standards for Internal Controls](#), management should ensure that staff are properly implementing policies and procedures consistently and effectively. We also found that SMC lacked reliable data on the reasons for case closures, which inhibited its ability to understand and mitigate the impacts on people of color. Specific areas that need to be addressed are the length of time cases remain open beyond the completion of obligations, and the accuracy of data documenting the reason that cases were terminated.

Recommendation 12

The Seattle Municipal Court should clarify its policy on administrative case closures and create internal controls to ensure that its probation counselors are consistently submitting order to close recommendations to judges upon an individual's completion of court obligations and probation conditions.

Recommendation 13

The Seattle Municipal Court should develop data such that it can track and regularly assess the length of time people's cases remain open after completing court obligations and probation conditions.

Recommendation 14

The Seattle Municipal Court should develop internal controls to ensure termination reason data is sufficiently reliable for management purposes.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objective of the audit was to assess the impacts of SMC probation on people of color and the racial proportionality of imposing probation, conditions of compliance, successful completion, and early release. As part of this review, we identified gaps in the collection and usage of Seattle Municipal Court Information System (MCIS) data and recommended filling those gaps and suggest further areas of study.

Scope

The SMC probation population we identified for this audit consisted of defendants on SMC probation in 2017-2019. To assess the impacts on probation on these individuals, for some analysis we assessed data associated with their entire involvement with SMC that could have started before 2017, or whose cases remained open beyond 2019. Our audit focus was people of color, although we identified data gaps for other populations. To assess SMC probation budget and workload, we assessed 10 years' (2010-2019) worth of SMC documents, including budget actuals and the number of full-time employees.

Methodology

To accomplish this audit's objectives, we performed the following work:

- Reviewed state and local laws related to probation including the Reviewed Washington State Court Rules: Administrative Rules for Courts of Limited Jurisdiction (ARLJ) – Misdemeanant Probation Department and Criminal Rules for Courts of Limited Jurisdiction (CrRLJ), and SMC local court probation rules.
- Reviewed Probation Policies and Procedures Manual (2019 edition) and online materials regarding SMC Probation.
- Analyzed 10 years' worth of proposed budgets, actual spending, and workload data.
- Created a more accurate and complete dataset for race and ethnicity than existed in the Seattle Municipal Court Information System (MCIS) (See Appendix C) for the methodology.
- Analyzed several SMC MCIS datasets to assess disproportionality and the impacts of probation.

- Observed and documented an intake meeting between a SMC probation counselor and a person assigned to probation.
- We reviewed SMC court documents for 10 randomly selected individuals on probation. While the information gleaned from the document review cannot be extrapolated to the entire probation population, it provided us with valuable insights into the court and probation process.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX A

Department Response



WILLIE GREGORY
PRESIDING JUDGE

September 16, 2020

Virginia B. Garcia

David G. Jones, City Auditor Seattle Office of
City Auditor 700 Fifth Avenue, Suite 2410
Seattle WA 98124-4729

Dear Ms. Garcia and Mr. Jones,

Thank you for the opportunity to review and comment on your audit report titled "Assessment of Seattle Municipal Court Probation Racial and Ethnic Proportionality." The Seattle Municipal Court thanks the Office of the City Auditor (OCA) for its thorough and thoughtful review of our Probation program. The court participated in the assessment with a spirit of transparency and cooperation.

Our nation's criminal legal system has a long, painful history of racial injustice, and SMC has been working to undo the structural racism and disproportionality evident in our court. We are committed to equitably serving court clients, eliminating racial disparity in all areas of our work, and continuously improving how we provide court programs and services. Because our court is only one piece of a larger municipal legal system, we believe this work needs to be done in partnership with stakeholders and community. The court has led efforts to create change in the system as a whole including convening a criminal justice coordinating council and participating in City Council initiatives like the recent Criminal Legal System Realignment work group, Reentry Task Force, and the Bail Reform work group.

The court is fully committed to evaluating our programs and services through an equity lens and ensuring equitable outcomes for all court participants. As a separate branch of government, SMC is not subject to Executive Orders; however, we fully embrace and support the spirit of the City's Race and Social Justice Initiative (RSJI) and the use of a racial equity toolkit as recommended by OCA in this report. While the toolkit is valuable for evaluating specific program aspects, we are also actively seeking to implement a comprehensive diversity, equity, and inclusion approach across the court. This starts with adopting equity-focused performance metrics that we hope will have a significant impact on addressing racial and ethnic disproportionality.

Seattle Municipal Court, P.O. Box 34987, Seattle, WA 98124-4987
Telephone: (206) 684-5600
seattle.gov/courts

In 2020, SMC restructured our Programs and Services division which includes Probation Services, in response to stakeholder feedback, our desire to decrease disproportionate impacts to the clients we serve, and a [2020 report](#) commissioned by SMC from the Vera Institute of Justice (Vera) to identify ways to most effectively serve our clients and improve our program. SMC is addressing Vera’s findings and [evolving our approach to probation](#), a post-adjudication jail alternative in which counselors are paired with clients to support them as they meet court-ordered obligations.

The OCA audit reviewed data from 2017 through 2019 and recommendations were made accordingly. However, a tremendous amount of work has taken place in SMC Probation Services since that time, and we anticipate the reforms we implemented in 2020-2021 will result in our ability to collect better and more complete data, and significantly improve probation client outcomes.

Beginning in 2020, we made the following changes in our probation approach:

- Discontinued records checks, the practice of monitoring individuals’ criminal records after case obligations have been completed, except in cases where records monitoring is required by statute. As of early 2021, SMC had reduced records checks by 78% resulting in 1,640 less clients on SMC probation.
- Focused Probation Services on high-risk case types, which has reduced clients on active supervision by 16%.
- Incentivized early release from probation by utilizing a goal-based approach to supervision. This is resulting in promising signs of an overall decrease in the amount of time served on probation. While the 2020 Vera evaluation found that the average length of supervision was 3.8 years, our newly published [key performance indicators](#) suggest we have decreased length of supervision to 18.7 months.
- Implemented a new case closure policy where counselors administratively close cases when clients have completed their goals.
- Began collecting self-reported race and ethnicity data through a new probation intake process.
- Began collecting client feedback as they exit probation. Initial results show 78% of clients completing the survey feel supported, encouraged, and motivated by their probation counselor.
- Eliminated discretionary supervision fees imposed in criminal cases including all probation-related fees.

Seattle Municipal Court has worked tirelessly to build effective pretrial intervention strategies that can address the needs of clients. While OCA noted in the audit that the *“Probation Budget is Reduced After Years of Decreasing Workload,”* over the past decade there has been a deliberate shift by the court and our partners away from post-

sentence supervision and to greatly expand our pretrial strategies, all with the same level of resources. These pretrial innovations include the expansion of a thriving [Community Resource Center](#), conducting successful [SMC In The Community](#) outreach events, partnering in the [City Attorney's prefile diversion](#) efforts, and launching a redesigned [Seattle Community Court](#) where participants are immediately released from jail so they can begin setting goals and connecting to community services.

One important recommendation made by OCA is that the court must ensure that our new information technology system, due to be implemented in the summer of 2022, can monitor and report on probation outcomes. The court strongly concurs with this finding. Currently, the court is reliant on 30-year-old technology for case management, probation, and tracking financial information. As we modernize our technology platforms and transform the ways we deliver customer service, our highest priorities are strengthening our data-focused internal controls and building mechanisms to quickly analyze meaningful outcome data across court service areas.

We appreciate OCA for the significant work put into this audit and for providing SMC with fourteen recommendations. We share a goal with OCA to ensure that SMC probation is not contributing to racial disparities present in our criminal legal system and that probation results in successful outcomes for everyone. We will work to address the recommendations and continue our work to ensure all who come to our court are heard, feel that they were treated fairly, and leave better than when they came to us.

If there are any questions regarding our audit response, please contact me.

Sincerely,



Judge Willie Gregory
Presiding Judge

APPENDIX B

List of Recommendations

Include a numerical list of all recommendations.

Recommendation 1: The Seattle Municipal Court should update the Municipal Court Information System demographic data by obtaining self-identified race and ethnicity data from its probation clients during probation administrative processes.

Recommendation 2: The Seattle Municipal Court should update the Municipal Court Information System demographic data by obtaining self-identified gender data from its probation clients during probation administrative processes.

Recommendation 3: The Seattle Municipal Court (SMC) should perform a Racial Equity analysis on its probation program. The racial equity analysis should specify how SMC intends to address and report on its progress towards eliminating disproportionalities within the probation program, including how it intends to involve communities of color that are disproportionately represented in probation.

Recommendation 4: The Seattle Municipal Court should include records checks as a distinct activity in its definition of probation services.

Recommendation 5: The Seattle Municipal Court should include information on records checks in its management data system so it can regularly assess and report on the impact of records checks on individuals.

Recommendation 6: The Seattle Municipal Court should conduct and document an internal review of the activities involving monitoring not currently in its definition of probation to determine if these activities are having unintended negative impact on people of color.

Recommendation 7: The Seattle Municipal Court should engage with communities of color, City stakeholders, and subject matter researchers about the replacement and implementation of its risk assessment tools.

Recommendation 8: The Seattle Municipal Court should review its implementation practices for its new risk assessment tools to ensure they are consistent with the four criteria of anti-bias, relevance, validity, and consistent and transparent application.

Recommendation 9: Given that in September 2021, the Seattle Municipal Court (SMC) will have one year of data for its new fine and fee structure, SMC should continue to examine the purpose and outcomes of its fines and fees and apply the City of Seattle Racial Equity Toolkit to eliminate discretionary and administrative fines and fees that have an adverse impact on the most vulnerable segments of the probation population (e.g., individuals who qualify for indigent status).

Recommendation 10: Seattle Municipal Court should establish internal controls to ensure waived and suspended fines and fees are properly applied and documented.

Recommendation 11: The Seattle Municipal Court should ensure that its new information technology system can monitor and report on probation outcomes and impacts by race and ethnicity and other demographic populations.

Recommendation 12: The Seattle Municipal Court should clarify its policy on administrative case closures and create internal controls to ensure that its probation counselors are consistently submitting order to close recommendations to judges upon an individual's completion of court obligations and probation conditions.

Recommendation 13: The Seattle Municipal Court should develop data such that it can track and regularly assess the length of time people's cases remain open after completing court obligations and probation conditions.

Recommendation 14: The Seattle Municipal Court should develop internal controls to ensure termination reason data is sufficiently reliable for management purposes.

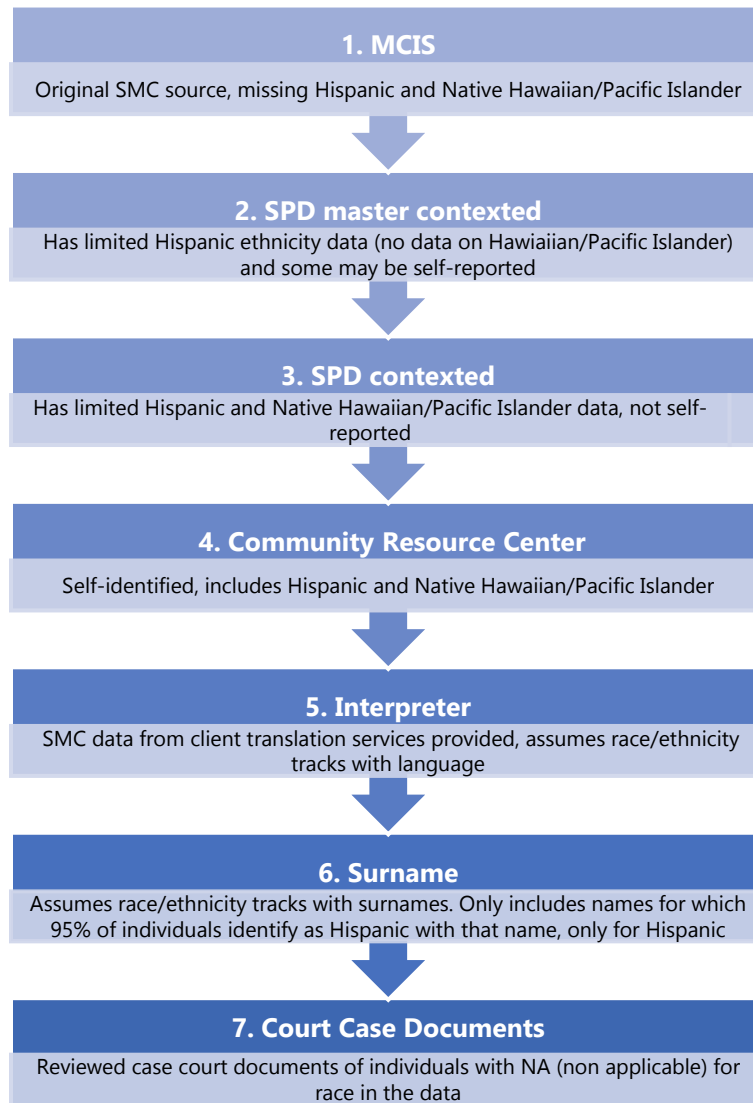
APPENDIX C

How the Office of City Auditor Developed a More Accurate and Dataset of the Racial and Ethnic Composition of SMC's 2017-2019 Probation Population

In Section 1, the Office of City Auditor (OCA) identified several gaps with the Seattle Municipal Court's (SMC) Municipal Court Information System (MCIS) demographic data. Throughout this report we display the results of our proportional analysis with the dataset we developed. This appendix demonstrates how we addressed the data gaps in the MCIS dataset to create a more comprehensive dataset to meet the audit's objectives of identifying the proportionality of people of color in probation.

To generate a more valid and reliable estimate of people of color in SMC's probation system than existed in MCIS data, we gathered data from seven sources as shown in Exhibit 14 below. We worked with Seattle Police Department (SPD) and SMC's Research, Planning, and Evaluation Group (RPEG) officials to extract information from two datasets on Hispanic/Latinx individuals but found that their demographic data was incomplete. To remedy the gaps in SPD's demographic data, we augmented the SPD datasets with data from the SMC Community Resource Center (CRC), analyzed data with Hispanic/Latinx surnames, obtained SMC language interpreter data, and reviewed court case documents of individuals on probation. Combining these datasets allowed us to create a more comprehensive and inclusive date set reflective of SMC's probation population than what was present in the MCIS data.

Exhibit 14. List of Seven Data Sources OCA used to Identify Race/Ethnicity in Probation Population Data



Source: Office of City Auditor graphic

We connected the datasets through unique defendant identifiers. We then created a new race and ethnicity column with the most reliable race and ethnicity information available for each person, using race and ethnicity from other sources when it was missing from the original SMC-provided data. Finally, we prioritized conflicting information based on the reliability and completeness of their source and addressed other data discrepancies. Most of the race and ethnicity information in our updated dataset (95 percent of all cases) are from three sources: the original dataset provided by SMC (MCIS data), the CRC data, and the SPD files (contexted and master file). Only four percent of the cases in our updated dataset have race and ethnicity data drawn from our analysis of interpreter data, Hispanic/Latinx surnames, and our review of court case documents. Our inclusion of additional data and our analysis of Hispanic/Latinx surnames resulted in only one percent of data missing for race and ethnicity compared to six percent in the SMC-provided data.

OCA-Generated Race/Ethnicity Data Identified More People of Color and Has Fewer Missing Values

Exhibit 15 shows that using more reliable data than what was in the MCIS original data, resulted in a larger share of the probation population being people of color (POC) (46 percent with our data compared to 32 percent in the SMC-provided data). It also shows fewer missing values for race and ethnicity (from six percent in the original SMC-provided data to one percent in the OCA-generated dataset).

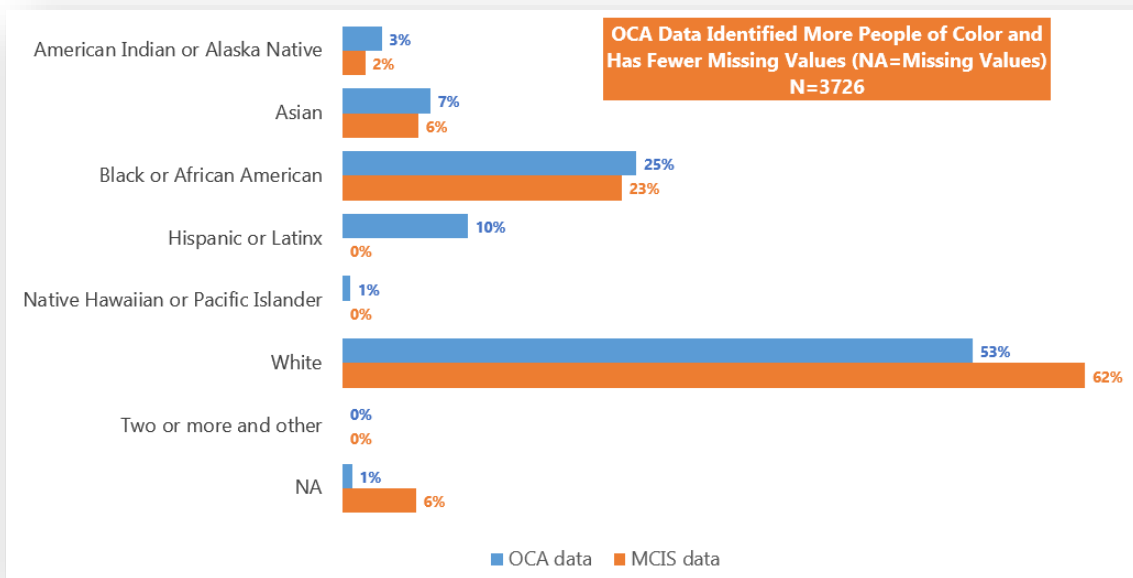
Exhibit 15: Comparison of Probation Population by Race/Ethnicity Based on MCIS Original Data Compared to OCA’s Combined Data

SMC ORIGINAL DATA (MCIS)			MCIS + SPD + CRC + INTERPRETER + SURNAME + CASE FILES DATA		
Defendant Race	n	%	Race Ethnicity OCA Final	n	%
Asian/Pacific Islander	236	6%	Asian, non-Hispanic	274	7%
Black	872	23%	Black/African Am, non-Hispanic	918	25%
<i>Hispanic</i>	0	0%	Hispanic/Latinx	391	10%
Native American/Alaska Native	70	2%	Am Indian/Alaska Native, non-Hispanic	122	3%
<i>Native Hawaiian/Pacific Islander</i>	0	0%	Nat Hawaiian/Pac Islander, non-Hispanic	24	1%
White	2319	62%	White, non-Hispanic	1968	53%
NA + Unidentified	229	6%	NA	29	1%
TOTAL	3726	100%	TOTAL	3726	100%
TOTAL POC	1178	32%	TOTAL POC	1729	46%

Source: Office of City Auditor analysis of Seattle Municipal Court MCIS data and data from six additional sources

As shown in Exhibit 16, representation of Hispanic/Latinx and Native Hawaiian/Pacific Islanders went from zero in the SMC-provided data to ten percent and one percent, respectively, in the updated data. The share of individuals categorized as White went down from 62 percent in the original SMC-provided data to 53 percent in the OCA-generated dataset and the share of people of color increased from 32 percent in the SMC-provided data to 47 percent in the OCA-generated dataset. The impact of this data-cleaning exercise shows that using the original SMC-provided data could have led to erroneous conclusions.

Exhibit 16. SMC Probation Population (2017-2019) by Race/Ethnicity Based on OCA-Generated Race/Ethnicity Data and MCIS Data



Source: Office of City Auditor graphic of updated and MCIS data

Proportionality Analysis Methodology

To compare the SMC probation population to the Seattle population, we followed these steps using the statistical analysis language R:

1. Loaded and cleaned MCIS race data;
2. Created OCA race/ethnicity data through a race and ethnicity analysis of several sources;
3. Loaded and cleaned ACS Seattle demographic data;
 - a. Calculated proportions for each race/ethnicity (= to the number of people in a category / total Seattle population);
 - b. Combined the “two or more” and “other” ACS categories.
4. Reworded race/ethnicity categories so the probation data more closely matched the ACS data.
5. Combined all data into one table (exported as a CSV file):
 - a. Probation counts and proportions OCA 2017-2019,
 - b. City counts and proportions 2018.
6. Manipulated table to create graphs in an Excel workbook; and
7. Ran proportion significance tests, synthesized results in an Excel workbook.

Significance Tests

Significance tests, such as t-tests and z-tests, evaluate the probability that a null hypothesis is true. Here, the null hypothesis is there is no difference between the proportion of a certain race/ethnicity

population on SMC probation and the proportion of that population in Seattle (the alternative hypothesis is there is a difference between the proportions).

Significance tests give a probability value, or **p-value**, which corresponds to the probability of obtaining a given summary statistic (mean or proportion) if the null hypothesis is true. If the p-value is low (conventionally, below 0.05 or 0.01 of 1), there is a small enough chance that the null hypothesis is true. We can reject the possibility that the proportions are equal with 95 percent confidence. This means that the difference between the proportion of a certain population on probation and the proportion of that population in Seattle is statistically significant, and not occurring randomly or due to chance.

For this analysis, we used the R “prop.test” (proportion test) command to run a two-sided z-test²² (which evaluates the difference in both directions, as opposed to evaluating only if one proportion is larger or smaller than the other). Besides a p-value testing the null hypothesis of no difference between the two proportions, it also gives a confidence interval for the difference between the two proportions. The main significance tests statistics are in Exhibit 17.

Exhibit 17: The difference between the proportion of a race/ethnicity group on probation (OCA data) and the proportion of that group in Seattle is statistically significant for all cases.

Race/ethnicity	Proportion 1 (Probation)	Proportion 2 (Seattle)	95% Confidence Interval			p-value
			Lower value	Difference between proportions	Upper value	
Asian	0.07	0.15	-0.08	-0.08	-0.07	<0.01
Black or African American	0.25	0.07	0.16	0.18	0.19	<0.01
Hispanic or Latinx	0.10	0.07	0.03	0.03	0.05	<0.01
American Indian or Alaska Native	0.03	0.01	0.02	0.03	0.03	<0.01
Native Hawaiian or Pacific Islander	0.01	0.00	0.00	0.00	0.01	<0.01
White	0.53	0.65	-0.13	-0.12	-0.10	<0.01

Source: Office of City Auditor significance test analysis

²² To identify the z-value, you can use the p-value in a z-table. If $|z| \geq 1.96$, then the difference is significant at 95 percent. You can also identify the z-value using the chi-square (x-square) statistic, which is equal to the square of the z-value.

APPENDIX D

Risk Assessment Tool Guidance

In addition to concerns about SMC’s risk assessment tool being biased, we identified other issues with SMC’s implementation of the assessment tool. Other concerns were that if SMC’s tool was not used as intended, modifications to it could have reduced the tools’ validity and reliability. Because there is no correlation between needs and recidivism, poor needs scores do not equate to a higher risk of recidivism. In the SMC assessment tool, some risk questions and needs questions were treated equally. Someone with a high risk and low need could score the same as someone with low risk and high need even though their circumstances vary widely. To ensure intended outcomes, assessment tools need to be evaluated for bias, relevance, validity, and application, especially when they deviate from the original tool.

Based on our review of research studies on assessment tools, we reviewed SMC’s practices related to the tool it uses against four criteria: anti-bias, relevance, validity, and application. SMC should adopt these criteria when making decisions about the replacement of its current tool and during the implementation of its new tool. Exhibit 18 shows the results of our review.

Exhibit 18: SMC Risk/Needs Assessment Tool Review

Area	Criteria	Condition
Anti-bias	All City programs and policies should be viewed through a Race and Social Justice Initiative lens to eliminate inequitable and disproportionate outcomes. The Seattle Municipal Court (SMC) should use the City’s Racial Equity Tool to review the tools it has selected or may select.	The Wisconsin tool had not been evaluated with the City’s Racial Equity Toolkit.
Relevance	Questions to measure risk should be related to the crime. SMC should ensure that the questions in the replacement tools are relevant to the crime and that any changes to questions in the tools do not favor people with privilege.	Risk/needs assessment tools that ask questions unrelated to the crime may be biased towards people of color.
Validity	Assessment tools should be revalidated, especially when they deviate from the original tool, to ensure they are meeting intended goals. SMC should establish a plan to	SMC had adjusted the Wisconsin Tool for use in probation, including the addition of a 1A level, which is not documented in SMC’s Probation Policies and

	<p>assess and validate the results of its assessment tools.</p>	<p>Procedures classification level descriptions. This and other changes to the classification system have not been validated or revalidated since the tool was put into use over 20 years ago.</p>
<p>Application</p>	<p>SMC management should institute internal controls to ensure probation counselors are consistent in administering assessment tools, deciding when not to administer the tool, and in conducting reassessments, overrides. Internal controls should also be instituted to ensure transparency in the status and review reports probation counselors submit to the Court.</p>	<p>32 percent of SMC's records on supervision assignment levels were not the result of an assessment. Although SMC officials stated that the assessment tool is not administered for certain types of crimes, we found evidence that all types of crimes from assaults to trespassing can result in an assignment levels without an assessment. The policy of when not to administer the assessment is not clear in SMC's Probation Policies and Procedures manual.</p>

APPENDIX E

Seattle Office of City Auditor Mission, Background, and Quality Assurance

Our Mission:

To help the City of Seattle achieve honest, efficient management and full accountability throughout City government. We serve the public interest by providing the City Council, Mayor and City department heads with accurate information, unbiased analysis, and objective recommendations on how best to use public resources in support of the well-being of Seattle residents.

Background:

Seattle voters established our office by a 1991 amendment to the City Charter. The office is an independent department within the legislative branch of City government. The City Auditor reports to the City Council and has a four-year term to ensure her/his independence in deciding what work the office should perform and reporting the results of this work. The Office of City Auditor conducts performance audits and non-audit projects covering City of Seattle programs, departments, grants, and contracts. The City Auditor's goal is to ensure that the City of Seattle is run as effectively, efficiently, and equitably as possible in compliance with applicable laws and regulations.

How We Ensure Quality:

The office's work is performed in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. These standards provide guidelines for audit planning, fieldwork, quality control systems, staff training, and reporting of results. In addition, the standards require that external auditors periodically review our office's policies, procedures, and activities to ensure that we adhere to these professional standards.

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