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October 27, 2021

Dear Whatcom County,

In May of 2020, an African American man named George Floyd was murdered by a white police officer during arrest, while two officers of color stood by in Minneapolis, Minnesota. The nation watched the video of this incident in horror, as Mr. Floyd begged for air, help, and finally for his mother. What happened is undeniable, and it is an understatement to say it absolutely should have never happened, especially at the hands of a public servant tasked with serving and protecting Mr. Floyd. Research has shown that both nationally and locally¹, outcomes are different for people of color in the criminal justice system.² One objective of these listening sessions and this report was to better understand the experience locally of people of color in our criminal legal system, as data is not always readily available.

I wanted to become a Prosecutor because I care deeply about people. I want to protect people and keep our community safe. In the Prosecutor's office, we fight for the victims of crimes. We see humanity in some of their most vulnerable moments and work directly with victims of crimes impacted by unspeakable acts – rape, domestic violence, sexual assault, animal abuse, crimes against children, physical assault, and even murder. I believe that the vast majority of people who work within the criminal justice system come into these systems as employees to serve honorably, keep our community safe, and to protect people. Criminal justice work exists within a social contract – community members must be able to trust that protection and safety will be a result of calling 911 for help, and that their cases will be treated with fairness and without bias. But for some community members, particularly in our communities of color, this is not the case, and instead, interactions with the criminal justice system have caused harm.

There is bias within the criminal justice system, just as there is bias across all systems and within all individuals – and we will continue to work to ensure the system is fairer and more equitable. The work involved in criminal justice reform is complex and often isolating; changes are difficult to make alone or from within the system. Bringing the community together to meet with me was both meaningful and empowering. While the list of “next steps” is substantial, the ongoing support provided by so many community members will make this work possible within the confines of limited resources. Thank you to all who shared their pain, experiences, ideas and hopes with me – your time is valuable, and this report and action plan is a direct result of your input.

Sincerely,

Eric J. Richey, Whatcom County Prosecutor

¹ Report to Whatcom County Stakeholders on Jail Reduction Strategies (<https://www.vera.org/downloads/publications/Whatcom-County-Final-Vera-Report.pdf>)

Historical Jail Statistics: <https://www.waspc.org/historical-jail-statistics>

² The criminal justice system involves all the participants in criminal law, including prosecution, police, public defender, and the courts.

Report on Prosecutor's Listening Sessions, 2020

Executive Summary

Throughout the summer and fall of 2020, Prosecutor Eric Richey met with more than 35 individuals who identified as Black, Native American, Hispanic, Latinx, Asian, or multi-racial, along with individuals who were working in the community on behalf of Black, Indigenous, and people of color. The goal of these meetings was to better understand the experience of people of color in the Criminal Justice System, and more specifically, to gain information about ways in which the Prosecutor's Office policies and operations can better serve the community.

The themes that emerged from these listening sessions are shared in detail in this report. Overall, these conversations centered around the need for more communication and a desire for engagement; the community's questions about oversight; the fear of law enforcement in communities of color; the need for more education about the criminal justice system; ensuring access to justice for all; the desire for prosecution to be applied equitably and without bias³; and the impact of minor convictions and criminal records on individuals and families.

Why this process?

Hosting convenings with the community regarding the topic of racial disparities in our criminal justice system was part of the Prosecutor's 2020 workplan. The wrongful deaths of Breonna Taylor, George Floyd, and Ahmed Arbery and tragically too many others further catalyzed the importance of this work, and in June of 2020, the Prosecutor pulled together a team of community members to provide guidance for this process. The team suggested that Prosecutor Richey meet with stakeholders from local activist groups and specifically with individuals and groups from our Black, Native American, Hispanic, Latinx, and Immigrant communities. Prosecutor Richey was able to meet with several groups and community members and listen to perspectives, stories, and experiences people had with the criminal justice system with the goal of understanding how people from our entire community, especially those who feel they have experienced unjust treatment, can be better served by the Prosecutor's Office and the criminal justice system.

Acknowledgment and Gratitude

Thank you to the following individuals who provided guidance and leadership to this process:

Riannon Bardsley
Carrie E. Blackwood, JD
Heather Flaherty, MBA
Vernon Damani Johnson, PhD
Nick Lewis

Ceci Lopez, JD
Vanessa Martin
Lisa McShane
Terrance "TeeJay" Morris

³ Prosecution includes charging decisions, bail recommendations, offers of plea bargains, and diversion opportunities. National data shows prosecution is often higher for people of color and the Prosecutor's office plans to prioritize collecting this level of data locally to determine where there are further opportunities for improvement.

Listening Session Themes

The media is flooded with national stories of racial profiling, brutality, and inequitable enforcement of law, which obviously impacts how our BIPOC community views our local criminal justice system. During conversations, community members talked about some local incidents that have created additional fear and distrust of the criminal justice system. The fear is real and understandable. The criminal justice system has a long way to go to build trust in communities of color to ensure equitable enforcement of law and access to justice.

Some local experiences that were shared with me that demonstrate the context for the feelings of fear include individuals not feeling comfortable coming forward to report hate crimes, at times because of their immigration status and not wanting to be deported, as well as incidences of men carrying rifles in order to “protect” local businesses during the Black Lives Matter protest, and related, men carrying rifles during Pride parades with the goal of intimidation.

Fear of Law Enforcement Interactions

Some community members shared their fear of law enforcement and expressed that the white community does not have that same fear. They indicated that people of color take extra measures such as making sure their vehicles are in excellent condition in order to avoid the risk of police contacts. Community members of color shared that they need to teach their children how to act if they are pulled over by the police in order to avoid escalations into potential use of force, jail bookings, and even physical danger. Many expressed that these precautions were driven by fear.

Access to Safe Policing for All

People of color, and particularly non-native English speakers, do not always feel comfortable accessing the Police or the Criminal Justice system when they have been victims of crime or have a public safety concern. Fears of general unfair treatment and distrust of Law Enforcement were shared--specifically regarding Law Enforcement utilizing Border Patrol for translation and concerns of this leading to potential detention or deportation. Some shared that they don't feel over-policed necessarily as community members of color, but they are concerned about what is perceived as an overly aggressive response. Black, Latinx, and Native American community members all shared that they want to be able to access police in the same way white community members do.

Need for both widely available and accessible translations services and more complete communication from the Prosecutor's Office

One story was shared regarding a non-native English speaker being pulled over for expired tabs. This individual was an immigrant working on obtaining full citizenship, and was law-abiding, other than having expired car tabs, which is only an infraction. When this individual was pulled over, they immediately called their partner to serve as a translator as they were afraid of the Officer calling Border Patrol to utilize translation services. The Officer was kind and understanding in this case and issued a citation in the field rather than escalating the situation. However, after a police encounter, people are sometimes left wondering if a case had been filed, whether they missed a court hearing and a warrant had been issued, or, in the alternative, whether a case was referred to the prosecutor and declined.

[Criminalization of Substance Use Disorders, Behavioral Health Issues, and Poverty](#)

Community members repeatedly voiced support for alternatives to incarceration for crimes of addiction, behavioral health issues, and poverty. People felt that the sweeps of homeless camps, the lack of options for shelter and housing for our homeless population, lack of treatment for substance use and behavioral health, and lack of living-wage jobs all contributed to reliance on the criminal justice system as our social service safety net, even though it was not designed as such. Many shared that, specifically for low-level charges such as Driving with a Suspended License, they'd like to see an alternative response and diversion to social services and resources as a way to increase traffic safety, instead of issuing more citations to someone who may not be able to afford the fines and fees. Several people called this charge "Driving while Poor" And others called it "Driving while Brown."

[Improvement of Data and Transparency](#)

A recurring theme in these discussions was the need to improve data and transparency in the Criminal Justice system. Community members want to know and understand the demographics of who is being arrested in our community, who is going to jail and for how long, and what the outcomes are for both victims of crime and those accused and convicted of crimes. There is a strong desire for more sharing of data regarding Law Enforcement, including disciplinary actions against Officers, arrest patterns and trends, and prosecutorial charging decisions.

[Improve the Understanding and Knowledge About the Criminal Justice System; Community Involvement](#)

Many people did not fully understand the Prosecutor's role in the Criminal Justice system and requested more information about the office and the position. People outside of the criminal justice system--often people of color, especially if new to this country--do not understand criminal process. People do not know the difference between a prosecutor and a defense attorney, or what happens after a crime is charged. People new to our community might appreciate and benefit from education from the prosecutor's office regarding criminal law.

[Desire for Oversight](#)

Many shared concerns about racial profiling in Whatcom County. Community members shared additional concern that law enforcement is not held accountable when racial profiling happens. Questions arose regarding what the training is for Law Enforcement and what the rules are regarding use of force. There were demands for clear and transparent information and data about officers and leadership. Some groups expressed concern about data issues regarding videos and bodycams. Community members also felt that incidents of abuse of power within law enforcement should be made public and that the community should be involved in addressing those incidents. People wondered who oversees the prosecutor, and whether charges are legitimately filed, over-filed, or not filed when law enforcement may have done something wrong. People questioned whether the Prosecutor would support an oversight committee, or an ombudsman who could help address these issues. 2020 legislature passed sweeping police reform laws designed to protect communities of color. Highlights include limiting law enforcement from using any force unless there is probable cause to believe that a crime was committed, and developing an independent investigation agency to review uses of deadly force by law enforcement. The legislature discussed an independent prosecutor agency to review officer uses of deadly force and there are plans to bring this legislation forward.

Desire for Investment in Prevention Efforts and Resources (Especially Within Juvenile Justice)

Community members discussed the need for more community centers and after-school programs accessible to all youth, regardless of race or socio-economic status; including welcoming places with enrichment activities and opportunities to build healthy relationships. Some also shared their concern about racism in the schools and a feeling of indifference from local law enforcement about these incidents at times. Individuals also shared their strong desire for alternatives to juvenile incarceration and concern for disparities within school discipline for youth of color, noting the local disparities for kindergarten readiness, high-school Graduation Rates, and reports of substance use, suicidality, anxiety, and depression.

Diversity + Equity + Inclusion

Some groups wondered whether there was an internal professional or consultant for Diversity, Equity, and Inclusion efforts within the County or Cities. Citizens believed this could help build understanding about disparate outcomes in prosecution and systemic reform opportunities. Community members wondered what kind of training opportunities the Prosecutor's Office and all of law enforcement had, whether there was any talk of hiring an Ombudsmen, and ways to build community oversight where an Ombudsmen could be both accountable to a community board and to the County and serve as a liaison between elected officials and the community. Members of the community expressed concern for a lack of input/representation regarding who is getting hired for positions at the County and who is getting elected to office.

Accountability and Collaboration Between Elected Officials and Community Members

Some groups stated that building in process for increased accountability and collaboration between Elected Officials and Community Members would be helpful moving forward. Community members shared concerns about the perceived lack of representation in decision-making processes.

Impact of Convictions:

Community members shared stories about the impact a criminal record has on their ability to live a productive and safe life. Convictions hurt people's opportunities in employment, housing, and travel in meaningful ways. People of color experience disparities in the impacts of convictions – even convictions for low-level crimes can hurt families and create barriers. Some are so hard to overcome that they impact generational wealth. When people are unable to earn a productive living or have gainful employment, they may be susceptible to committing more crimes as a means to cope. In some circumstances, convictions are not necessarily related to protection of the community.

Ideas from the Community

People of color in Whatcom County identified several potential policies and programs they felt could help address their concerns. This part of the report is reflecting to the community what was heard, not what can necessarily be acted upon. *Some of these ideas are not within the scope of the Prosecutor’s office to implement, and some are complex and would require changing laws at a federal or state level. Some additional information about actions taken are noted in italics below.*

Policies

Policy ideas include things that would change laws or rules about the criminal justice system, or that would require policies to be changed to achieve the idea. These included the following:

<p>Ideas with action already taken</p>	<ul style="list-style-type: none"> • Decriminalize drug use and possession. <i>The Washington Supreme Court Blake Decision effectively did this. More details in next section.</i> • No charges for DWLS. <i>At this time, DWLS 3rd is not being prosecuted as a stand-alone crime in Whatcom County Courts.</i> • Reinstate voting rights for felons. <i>There are laws in place that give guidance for when voting rights can be reinstated and the Prosecutor’s office interprets these liberally.</i> • Laws should be strengthened to prevent citizen-held firearms in areas where protests and demonstrations are occurring. <i>Prosecutor Richey spoke with the Attorney General about this matter and later testified before both house of the legislature to support a bill that prevented non-law enforcement from open carrying firearms at protests. This bill became law.</i>
<p>Ideas Prosecutor has discretion over but are not always actionable as a general policy</p>	<ul style="list-style-type: none"> • Defer prosecution of misdemeanors. • Vacate all misdemeanors during pandemic. • Decline to prosecute actions that arise out of pulling someone over for a safety violation (broken window, tail light, etc.).
<p>Prosecutor does not have decision-making authority or discretion over these ideas. To advance these, significant community discussion and involvement of stakeholders across the system would be required.</p>	<ul style="list-style-type: none"> • No incarceration of youth. • End policing of protestors and turn toward protecting protestors. • Reject militarization of law enforcement. • End money/cash bail system. • Legislate inability to consider vacated criminal background in employment and housing (coupled with ban the box). • Prohibit law enforcement unions from contributing to political campaigns. • Consider excluding disciplinary matters related to police use of force (including investigation and grievance of just cause) and training from collective bargaining for law enforcement and replace with state law requirements. • Increase age requirement to become a member of law enforcement. • Implement statewide affirmative action in hiring for law enforcement.

Programs

Ideas were considered programmatic if they required establishing a new service, department, or hiring of staff to implement. These included the following:

<p>Ideas with action already taken</p>	<ul style="list-style-type: none"> • Establish a Racial Equity Commission to work on disparities in the Criminal Justice System and in the Community in perpetuity. <i>This work is underway through the Chuckanut Health Foundation and co-founders Shu-Ling Zhao and Kristina Michele.</i> • Establish a civilian oversight board and/or community oversight for policing and Prosecutor. <i>State legislation has taken steps toward this.</i> • Provide Diversity, Equity, and Inclusion (DEI) trainings for all employees. Make this training integrated, comprehensive and on-going. <i>Prosecutor’s Office employees attended the Groundwater training facilitated by the Racial Equity Institute. Additional trainings will be required in the future as an ongoing priority.</i> • Hire an independent Ombudsman (community liaison) that would enable the community to gather data and provide responses to the community from the County that are data informed. <i>Office is looking to hire a position that may support this objective. This position would provide information to the community, but would not be in a role of investigating the Prosecutor’s office.</i> • Hire Diversity, Equity, Inclusion (DEI) experts for local governments. (Embedding positions within governments vs. the check-box approach – addressing this systemically across departments – likely a larger investment.) <i>Whatcom County is applying to be a part of the Government Alliance for Racial Equity and is assessing internal resources for DEI work.</i>
<p>Ideas Prosecutor has discretion over but are not always actionable as a general policy</p>	<ul style="list-style-type: none"> • Establish restorative justice as an alternative to the traditional route through the criminal justice system.
<p>Prosecutor does not have decision-making authority or discretion over these ideas. To advance these, significant community discussion and involvement of stakeholders across the system would be required.</p>	<ul style="list-style-type: none"> • For broken windshields and taillights, create a program to refer community members for assistance in getting repairs. Idea to have law enforcement not ask for a license, but instead, provide a resource. • State independent Ombudsman or oversight board to notify of law enforcement abuse of power, and possibly to investigate.

Process

Process ideas were focused more on shifting a procedure or how something is done. These included the following:

Ideas with action already taken	<ul style="list-style-type: none">• Focus on culture within the Prosecutor’s Office, including encouraging external community involvement that connect prosecutors in a non-prosecutorial setting with identity-based organizations that they do not share an identity with, and ongoing full integration of DEI development into every aspect of the Prosecutor’s office. <i>Line Prosecutors are encouraged to join the boards of community-based organizations and to volunteer in their professional capacity. Plans are underway to continue to build culture within the Office.</i>
Ideas Prosecutor has discretion over but are not always actionable as a general policy	<ul style="list-style-type: none">• Allow citizens to participate in review of incidents and/or review of data.• Focus on hiring practices within the Prosecutor’s Office and explore paid internships and recruiting in diverse settings.• Provide warning of release of accused abuser.
Prosecutor does not have decision-making authority or discretion over these ideas. To advance these, significant involvement of stakeholders across the system and community would be required.	<ul style="list-style-type: none">• Eliminate the drug taskforce.

Actions Taken Thus Far as a Result of this Response Process

The Prosecutor’s duties include filing felonies within Whatcom County and filing misdemeanors outside the cities’ limits. The Prosecutor is obligated to seek justice and to continually improve the criminal justice system, which is why a Prosecutor may support legislation. **The Prosecutor does not control police**, but Prosecutor’s filing policies can influence police action and policies.

Justice in prosecution is defined as applying laws in a fair and equitable manner. Like cases should be treated alike and accountability should be proportionate to the offense. When taking action, prosecutors should consider any disadvantage people face who interact with the criminal justice.

On July 31, 2020, a memo regarding policy changes was issued to the Prosecutor’s Office based on feedback from the listening sessions and the following factors: COVID-19 has created significant disruption in the Criminal

Justice System causing trial closures, creating case backlogs, and reducing the incentive to resolve cases. DWLS in the 3rd degree and low-level drug charges have been identified by national studies as drivers of disparate treatment in the criminal justice system, and people need to drive in Whatcom County to get to work and to obtain essential services. A person who is driving while suspended in the third degree is eligible to obtain a license but has not done so due to poverty or because they do not know how to obtain a license. Charging a person with a crime or fining a person for not having a license creates additional barriers to getting a license.

To reduce overburdened caseloads and reduce disparity in the criminal justice system, DWLS 3rd is no longer filed as a standalone charge. Upon implementation, over 367 cases were dismissed outright. Many of the reasons one's license would be suspended under the statute for DWLS 3 are not directly related to traffic safety – these include things such as failure to pay child support, failure to pay tickets, and failure to appear in court. Although accountability for these matters remains important, filing a criminal charge creates more barriers to achieving what the law is intended to remedy. Additionally, the Prosecutor is advocating with Washington State legislature for further reform on this matter. Prosecutor Richey endorsed SB 5226 to reduce the number of licenses suspended for failure to appear in court or failure to pay fines. In the Spring of 2021, SB 5226 passed both houses, and was signed by Governor Jay Inslee.

In efforts to address alternatives to incarceration for low-level offenses and to incentivize rehabilitation, prosecutors may offer stipulated order of continuances (SOC) on most standalone simple possession of drugs charges and, potentially, other lower-level felonies. Some SOC agreements may add a treatment component or other conditions designed to help a person avoid committing future crimes. The Prosecutor is currently offering the opportunity for people to get their case dismissed if they do not commit a new crime for 12 months. If they enter such an agreement and don't succeed, the individual is found guilty of the underlying charge. In this way, the Prosecutor is looking at different ways to incentivize treatment and rehabilitation vs. recidivism. To date, more than 50 people have taken advantage of this opportunity. The Blake Decision has impacted the cases that would have qualified for a stipulated order of continuance through this process by essentially decriminalizing simple possession of drugs. With all drug-related offenses, rehabilitation, and treatment for the individual and safety for the community are the highest goals. In Whatcom County, there is recognition for the need for more treatment capacity, and there are equity issues in access to treatment and in opportunities for diversion as well.

Additionally, prosecutors may directly file most new standalone simple felony drug possession charges and potentially other lower-level felonies in district (misdemeanor) court. This allows for the District Court Probation Department to offer support and to supervise rehabilitation for individuals. After the Prosecutor implemented this policy in July of 2020, (as mentioned above) the Supreme Court of Washington found the simple possession of drugs law unconstitutional on February 25, 2021, in the case of State v. Blake. In April of 2021, the Legislature followed suit and replaced the simple possession statute, making it a misdemeanor with diversion opportunities and treatment, as the Whatcom County Prosecutor had already done.

The Prosecutor is actively collaborating with co-founders Shu-Ling Zhao and Kristina Michele to support and advocate for the launch of the Whatcom County Racial Equity Commission. The idea for this Commission came from Prosecutor Richey's conversation with Zhao and Michele when questions arose about data in the criminal justice system, accessing institutional leadership who can help address community questions and concerns, and where to turn to create community-informed and community-led policy change. The goal of this Commission is to bring social justice leaders, people of color, elected officials, and institutional leaders together to address

systemic racism and racial disparities across Whatcom County. It has been exciting to see this program grow from a single conversation, and, once the Racial Equity Commission begins its work, we will be accountable and accept the responsibility to respond where disparity is found.

The Prosecutor has worked with local foundations to bring the Racial Equity Institute's Groundwater Training on diversity, equity, and systemic racism to the entire Prosecutor's office. Attendance was mandatory, because we all should continue to learn how individual, institutional, and structural bias and racism results in disparate outcomes for those we serve, and so that we can identify our bias and take anti-racist actions as a matter of course.

The Prosecutor's Office has made efforts to vacate charges for possession of marijuana to address historic overcharging of this crime in our communities of color and to acknowledge that marijuana is now legal. This will assist approximately 400 individuals in Whatcom County, starting with convictions from 1982. Efforts to have these charges vacated had stalled at the Judicial level but are being restarted as of October 18, 2021. This is an ongoing priority for the Prosecutor's Office. Clearing a person's record removes barriers to a productive life. Housing, employment, credit, and loans often hinge on whether someone has a criminal record. The Prosecutor is actively working with State Legislature on this matter as well and will update the community as this issue progresses.

Before these listening sessions, the Prosecutor's Office successfully launched the LEAD program (Law Enforcement Assisted Diversion). LEAD diverts individuals from the jail and directs them into treatment and case-management. Many community members expressed support for this approach in the listening sessions. The LEAD operational team is actively working to apply principles from the Government Alliance for Racial Equity and striving to ensure policies are applied equitably. The LEAD program also has a stated goal and purpose of reducing racial disparities within the jail.

The Prosecutor's Office is exploring hiring a new position to assist with increasing community engagement. This position would also be asked to provide analysis on the data of the Prosecutor's Office, working toward a community-facing dashboard that would report on meaningful metrics to local reform efforts and public safety.

Ongoing trainings regarding Diversity, Equity, Inclusion, and implicit bias will be prioritized for the Prosecutor's Office, in addition to an organizational health assessment to help better understand the opportunities for shifting culture, practices, and policies as needed to achieve the goals laid out in this document.

State-wide Opportunities

Prosecutor Eric Richey was appointed to the [Governor's Taskforce on Independent Investigations of Police Use of Force](#) and to [Taskforce 2.0](#). The Independent Investigations of Police Use of Force Taskforce was formed, "to provide a comprehensive set of reforms, provide insight and feedback and review the I-940 structure and protocols, other investigation models, and ultimately provide input to help inform legislation" at the State level. Taskforce 2.0 was established to report on racial inequities in the Criminal Justice System. Prosecutor Richey solicited further feedback in these listening sessions in order to gather and provide a broader community perspective on these taskforces. Members from both taskforces performed the important work of continually challenging traditional criminal justice thought and putting new ideas on the table.

Next Steps

The work of addressing inequities and historic racism in the Criminal Justice System is ongoing and is done with the goal of creating a community where everyone belongs—and where everyone knows they can safely call the police for help. As an elected official, Prosecutor Richey believes in public servant leadership and listening to the community he serves. Based on ongoing feedback from the community, well-researched best practices, promising new practices, and enhanced awareness of issues, the work of the Prosecutor's Office over the next two years will include the following:

- Support establishing a Hate Crime Community Taskforce /ensure Hate Crimes are being investigated properly by government. Prosecutor's office may convene a community meeting to advance this idea.
- Support Mental Health Court Expansion and other options to get people with mental illness help they need.
- Focus on increasing access to justice and ensuring that people feel comfortable reporting crimes and that they understand what happens throughout the process. Much of this work will be done internally, informed by community.
- Explore opportunities for bail reform through legislative advocacy.
- Because people don't always feel comfortable calling 911, engage with coalitions and communities of color to create alternatives to reporting crimes.
- Host a community conversation about incentivizing treatment and successful re-entry for those who have served time.
- Support reforms for the 18-24 age group and establishment of a Young Adult Court.
- Explore and support Restorative Justice as an option for victims who make that request.
- Schedule trauma-informed trainings for Prosecutor's Office.
- Support Re-Entry efforts, innovations, and collaborations in order to reduce recidivism locally.
- Support bringing Government Alliance on Race and Equity (GARE) to Whatcom County to create a process for decisions made by Whatcom County Government.