

MOTION BY SUPERVISORS SHEILA KUEHL AND
HILDA L. SOLIS

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Data Collection to Support Pretrial Reform in Los Angeles County

The need for pretrial reform in Los Angeles County has become even more compelling with the rise of the pandemic. Concern about the spread of COVID-19 in our jails forced the Sheriff’s Department and other justice partners to release incarcerated people as quickly as possible. The LA County Jail population was reduced from a total of 17,002 at the end of January to a total of 12,026 at the beginning of June. During the same time period, the number of incarcerated pretrial defendants decreased from 7,419 to 5,669. This rapid reduction in the jail population is unprecedented. LA County justice partners and the Superior Court worked tirelessly to review cases and grant releases. It is important not to lose this momentum when COVID-19 begins to wane. Rather, we need to use the lessons learned from this moment to inform long-term policy reform, and a thorough analysis of data related to the pretrial initiatives implemented in response to COVID-19 is a necessary and important first step.

The reduction in the number of pretrial defendants was the result of significant

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SOLIS _____

RIDLEY-THOMAS _____

KUEHL _____

HAHN _____

BARGER _____

changes to our pretrial system. Within the past few months, four reforms were implemented. Three of these reforms address the economic disparities inherent in money bail. First, our justice partners agreed to release incarcerated people charged with misdemeanors and held on bail up to \$50,000. Second, the Judicial Council implemented an Emergency Bail Schedule statewide on April 13th. This new schedule set bail at \$0 for many crimes, permitting release for those previously ineligible. While the Judicial Council voted to rescind the statewide Emergency Bail Schedule as of June 20th, Los Angeles Superior Court implemented their own \$0 bail schedule with new exceptions. Third, The Bail Project, a community bail fund, expanded their services in LA County. The Bail Project will pay bail for those who cannot afford it and provide access to services. These reforms reduce the number of people who are in jail pretrial simply because they are unable to afford their bail amount. By equalizing the opportunity for release, we ensure that fewer incarcerated people are at risk of contracting COVID-19 in jail.

The fourth reform is a pilot that analyzes the risks and needs of incarcerated pretrial defendants. The LA Superior Court led the justice partners in the effort to design this pilot over the past year, and the pilot started a phased implementation in March. This pilot is funded by the California Judicial Council and utilizes a pretrial risk assessment tool to calculate the defendant's risk of failing to appear in court and recidivating pretrial. The pilot also added a second risk-needs assessment tool at arraignment. Defendants released at arraignment are connected to supportive services with Project 180. To complement these four new reforms, the County also increased service connection through to the hard and innovative work of the Office of Diversion

and Reentry and thanks to a new court reminder system added by the Public Defender's and Alternate Public Defender's Offices.

These changes to our pretrial system are important because pretrial incarceration severely disrupts the lives of the defendants and their families. Pretrial incarceration can negatively impact a defendant's employment, housing, child custody, family wellbeing, mental health, and much more. These consequences often exacerbate poverty for the individual as well as for their family. Further, pretrial incarceration negatively impacts an individual's criminal case both by limiting the defendant's ability to assist their attorney in planning their defense and in stigmatizing the defendant in the courtroom. Studies show that defendants held pretrial are more likely to plead guilty, more likely to be convicted, and more likely to receive a longer sentence. The current pandemic exacerbates these disruptions and increases the likelihood that the incarcerated person and their family contract COVID-19.

Recognizing this danger and the need to reduce the County's reliance on incarceration, the Board unanimously passed a motion on June 9, 2020 to learn how we can maintain our reduced jail population (Supervisors Hahn and Ridley-Thomas, *Maintaining a Reduced Jail Population Post-COVID-19*). This motion directs stakeholders to produce a report in 60-days outlining how the County can maintain a jail population below the Bureau of State and Community Corrections (BSCC) rated capacity and outlining how the reduced jail population will generate cost savings. It is imperative that the Board gains an understanding of how these new reforms helped to reduce the pretrial population by approximately 2,000 people. Data is required to answer this question and to determine how the County can continue to reduce our

pretrial population because 46 percent of our total jail population has not been convicted of a crime.

The County also needs to understand how these four reforms impacted our pretrial system in order to implement the recommendations developed by the Alternatives to Incarceration Work Group. On February 12, 2019, Supervisors Sheila Kuehl and Mark Ridley-Thomas brought a motion entitled *Developing the Los Angeles County Roadmap for Expanding Alternatives to Custody and Diversion*, that established the Alternatives to Incarceration (ATI) Workgroup. This workgroup embarked upon a year-long collaborative effort among dedicated community stakeholders, advocates, and County departments to create a vision for a more equitable and health-promoting justice system. On March 11, 2020, the Board adopted the five main strategies contained in the final ATI report (Supervisors Sheila Kuehl and Mark Ridley-Thomas, *Building a System of Alternatives to Incarceration*, March 10, 2020). The third strategy focuses specifically on pretrial reform, encouraging the County to “support and deliver meaningful release and diversion services.” The three recommendations within that strategy include implementing a presumption of release, warm handoffs to community-based systems of care, a strengths and needs-based system of release, and the expansion of return-to-court support services to reduce failures to appear.

In adopting strategy three in the ATI report, the Board of Supervisors recognized the need for pretrial reform. This includes the development of policies that accurately and without bias identify the largest number of pretrial defendants possible for release while considering public safety. These reforms must also eliminate economic barriers to release by ending the practice of conflating lack of wealth with risk to public safety. With

an increase in pretrial release because of COVID-19, we have a real opportunity to study who was released from jail, why they were released, and what made them successful. With this information, the Board can begin to implement the ATI strategies in a smart way, making LA County a model for the state.

WE, THEREFORE, MOVE that the Board of Supervisors:

1. Direct the Chief Executive Office, in partnership with County Counsel, the Information Systems Advisory Body, the Public Defender, the Alternate Public Defender, the District Attorney, the Los Angeles City Attorneys Association, Los Angeles County Bar Associations, the Los Angeles Superior Court, the Sheriff's Department, the Probation Department, the Office of Diversion and Reentry, the Department of Mental Health, and community-based service providers, to report back to the Board in 270 days and quarterly thereafter with a report on the following information broken down by charges, type of release (e.g., released because of the Emergency Bail Schedule, paid cash bail, contracted with a bail bonds company, released on their own recognizance, released because of the Court's pretrial pilot, released because The Bail Project posted bail, etc.), race, gender, and age:
 - a. A comparison of the pretrial population incarcerated before and after the COVID-19 pandemic began;
 - b. The pretrial population released since the COVID-19 pandemic began;
 - c. The number of cases referred, applied, denied, and released by

program type;

- d. The Public Safety Assessment (PSA) risk tool score and pretrial release status;
- e. The Criminal Court Assessment Tool (C-CAT) risk score, recommended needs, and pretrial release status;
- f. The number of people classified as low, medium, and high risk on the PSA and C-CAT tools;
- g. The failure to appear rate since the COVID-19 pandemic began;
- h. Justice involvement outcomes for defendants during their case adjudication and after adjudication since the start of the COVID-19 pandemic; and
- i. What assistance was provided to those released pretrial, including but not limited to connection to services by type, receipt of services by type, court reminder calls, transportation to court, and connection to the Office of Diversion and Reentry, and associated pretrial court appearances and justice involvement outcomes since the COVID-19 pandemic began.

- 2. Direct the Chief Executive Office and the Justice Metrics Steering Committee to consider incorporating the corresponding metrics into those to be reported as part of the Justice Metrics Framework Initiative.