

MOTION BY SUPERVISORS SHEILA KUEHL AND
HILDA L. SOLIS

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Implementing the California Supreme Court’s *Humphrey* Decision

The California Supreme Court recently issued its decision in *In re Kenneth Humphrey*. The holding greatly impacts the existing pretrial system in California. The Supreme Court found that it is unconstitutional to detain a person because they cannot afford their bail amount. Pretrial detention creates a number of negative outcomes for both the accused person and public safety and should be used only when truly necessary. The Board of Supervisors is dedicated to implementing the philosophy of “care first, jail last” through a variety of justice reform initiatives. It is important that pretrial reforms flowing from the Supreme Court’s decision in *Humphrey* fit in with existing County reform initiatives while also ensuring both the constitutional rights of accused people and public safety.

California law requires that superior court judges in each county develop a bail schedule every year.¹ The bail schedule contains a list of offenses or aggravating factors and an associated bail amount. The Penal Code instructs judges to consider the seriousness of the offense when creating the bail schedule. Over the years, the bail

¹ Pen. Code § 1269b.

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KUEHL	_____
HAHN	_____
BARGER	_____
SOLIS	_____

amounts on the schedules have increased so much that the median bail amount in California is over five times higher than bail amounts in the rest of the nation.² When an accused person cannot afford their bail amount, they are forced to remain in custody even though they are presumed to be innocent of the charged offense. Research has found that pretrial incarceration leads to worse case outcomes, including a greater likelihood of conviction. Further, research has found that pretrial incarceration jeopardizes public safety because accused people who are held pretrial, especially those who are considered “low risk,” have an increased likelihood of future involvement in the criminal justice system. Lastly, people who are held pretrial also experience negative personal outcomes for employment, housing, child custody, and more. It is especially problematic that these negative outcomes are experienced by many accused people, disproportionately Black, Indigenous, and People of Color, simply because they are not wealthy enough to buy their pretrial freedom.

The Supreme Court found in the *Humphrey* case that it is unconstitutional to detain someone pretrial only because they cannot afford their bail amount. This ruling means that the State cannot continue to rely on bail schedules and assembly line justice to make decisions about the pretrial freedom of accused people. Rather, judges must consider the individual’s ability to pay bail or other least restrictive conditions of release that will ensure public safety and return to court. There must be a shift in approach in order to ensure that accused people are not unconstitutionally detained in Los Angeles County. As of April 12, 2021, 38.4 percent of the people in jail, or 51.3 percent of people in jail excluding people sentenced to state prison, are being held pretrial. This amounts

² Sonya Tafoya, *Pretrial Detention and Jail Capacity in California*, July 2015, <https://www.ppic.org/publication/pretrial-detention-and-jail-capacity-in-california/#fn-15>.

to 5,835 people held in jail who have not been tried and convicted of a crime, many of whom may be held in jail only because they cannot afford their bail.

Los Angeles County is focused on reducing the jail population and providing treatment and services in the community to build a healthier and safer County. The Board adopted the five strategies contained in the Alternatives to Incarceration Workgroup final report and established an initiative by the same name in the Chief Executive Office.³ The Board has also been working to reduce the jail population, so that services can be received outside of the justice system. The Board also established the Jail Population Review Council in September 2020 to safely decarcerate the jails.⁴ Further, the Board voted to develop a plan to close Men's Central Jail,⁵ and that report recommends a jail population reduction of approximately 4,500 people.⁶ Alongside these efforts, the Board voted in August 2020 to study the effectiveness of various pretrial policies in the County. This report will be released in May 2021, and it will provide important data and background for future policy decisions.⁷

The Supreme Court's decision in *Humphrey* is in line with the Board's justice reform initiatives. Those who are released pretrial could engage with services and support, assist their attorney in their defense, keep their jobs, pay their rent, care for their loved ones, and move their cars on street sweeping days.

³ Supervisors Kuehl and Ridley-Thomas, *Building a System of Alternatives to Incarceration*, March 10, 2020.

⁴ Supervisors Hahn and Ridley-Thomas, *Establishing the Jail Population Review Council*, September 15, 2020.

⁵ Supervisors Solis and Kuehl, *Developing a Plan for Closing Men's Central Jail as Los Angeles County Reduces its Reliance on Incarceration*, July 7, 2020.

⁶ Department of Health Services, *Report on Developing a Plan for Closing Men's Central Jail as Los Angeles County Reduces its Reliance on Incarceration*, March 30, 2021.

⁷ Supervisors Kuehl and Solis, *Data Collection to Support Pretrial Reform in Los Angeles County*, August 4, 2020.

It is important that Los Angeles County creates a collaborative, inclusive, and effective plan to present to the Courts that complies with the *Humphrey* decision in protecting the constitutional rights of accused people, promoting public safety, and reflecting the “care first, jail last” philosophy adopted by the Board.

WE, THEREFORE, MOVE that the Board of Supervisors direct Public Defender and Alternate Public Defender and instruct District Attorney to:

1. Consult with the Chief Executive Office, County Counsel, Los Angeles City Attorney, Los Angeles City Attorneys Association, Probation Department, Sheriff’s Department, Los Angeles Superior Court, California Attorney General, and other pretrial experts;
2. Report back to the Board in 60 days with recommendations for how Los Angeles County justice partners can implement the holding of *In re Kenneth Humphrey*, protect the constitutional rights of accused people, and promote public safety;
and
3. Present this report to the Los Angeles Superior Court as the County’s response to *Humphrey*.