

MOTION BY SUPERVISORS SHEILA KUEHL AND
HILDA L. SOLIS

July 13, 2021

Implementing *Humphrey* and ATI Pretrial Reforms

On April 20, 2021, the Board of Supervisors (Board) unanimously passed a motion authored by Supervisors Kuehl and Solis entitled “Implementing the California Supreme Court’s *Humphrey* Decision.” This motion directed the Public Defender and the Alternate Public Defender, and requested the District Attorney, to consult with relevant stakeholders and report back to the Board in 60 days with recommendations on how Los Angeles County could implement the holding of *In re Kenneth Humphrey*, protect the constitutional rights of accused people, and promote public safety. The stakeholders submitted their final report to the Board on July 6, 2021. Now is the time for the Board to take meaningful steps to implement recommendations from the ATI and *Humphrey* Workgroups on ways to overhaul the County’s approach to pretrial reform.

The County’s several efforts on pretrial reform since 2017 have brought us to the present moment, and now is a time for action. On March 8, 2017, the Board unanimously approved the first motion to explore pretrial reform.¹ Since then, the Board has passed four more motions supporting pretrial reform. Pretrial reform was also

¹ Supervisors Kuehl and Solis, Bail Reform (March 8 ,2017) .

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central to the Alternatives to Incarceration Workgroup report that was submitted to the Board on March 10, 2020. The Board adopted the five strategies outlined in the Alternatives to Incarceration Workgroup's final report, one of which was to "support and deliver meaningful pretrial release and diversion services." The recommendations within this strategy included expanding supportive services to reduce failures to appear, creating a strengths-and needs-based system of pretrial release using an independent pretrial services organizational unit, and instituting a presumption of pretrial release combined with warm handoffs to community-based systems of care. The focus on the County's need for pretrial reform continues.

After the April 20th *Humphrey* motion passed, the Board also passed a motion to close Men's Central Jail, which hinges, in part, on a reduction in the pretrial population. In response to the Men's Central Jail Closure Workgroup final report, submitted on March 30, 2021, the Board passed a motion on June 22, 2021 to take action. This motion, brought by Supervisors Solis and Kuehl and entitled "Jails Last: Creation of the Jail Closure Implementation Team," declared the Board's intent to depopulate and demolish Men's Central Jail, declared that it is unnecessary to build any new County jail or custody facility, and created a Jail Closure Implementation Team to guide stakeholders in safely closing the facility. The Workgroup report recommended that the jail system be depopulated by approximately 4,500 people and focused on the pretrial population as a priority because the pretrial population currently makes up over 40 percent of the jail population. Pretrial reform is integral to the Board's justice reform priorities and requires immediate action.

The Public Defender, Alternate Public Defender, and District Attorney submitted a joint report to the Board entitled "Implementing the California Supreme Court's *Humphrey* Decision" (*Humphrey* report) on July 6, 2021 in response to the April 20th

motion. Their comprehensive report, which has resulted from significant stakeholder engagement, provides fourteen important recommendations. Some of these recommendations are familiar, such as the recommendations to create an independent pretrial services organizational unit and to ensure that resources and services are available to the pretrial population. These recommendations overlap with the Alternatives to Incarceration Workgroup recommendations, and the repetition emphasizes their importance.

The Humphrey report also goes further. The stakeholders recommend:

- Creating a resource database of available pretrial services;
- Prioritizing services for pretrial defendants;
- Increasing funding to the Public Defender, Alternate Public Defender, and District Attorney before, and at, arraignment;
- Reforming bail-related court procedures;
- Amending bail schedules, so that bail is actually affordable and commensurate with bail amounts across the country;
- Reforming the bail system for people accused of Probation or AB 109 violations;
- Establishing a workgroup to make further recommendations;
- Creating a data collection system to inform pretrial reform;
- Training stakeholders on the requirements of *Humphrey*;
- Tasking the pretrial organizational unit with calculating ability to pay; and
- Estimating the costs of these recommendations.

As is apparent from these recommendations, the stakeholders took a meaningful and research-based approach to the way in which LA County can craft a model pretrial

system. Further, this report is signed by the PD, APD, and DA, meaning that it has support from both sides of the adversarial process.

LA County must build upon the foundation set in the *Humphrey* report. This includes expanding on the recommendations with more details, creating phased implementation plans, understanding the costs associated with the recommendations, and identifying funding sources. This report must spur action by the County, as the Board has received the same recommendations multiple times. The *Humphrey* decision requires action in order to prevent the unconstitutional pretrial detention of people in the jails. Pretrial reform is also desperately needed to realize the Board's criminal justice reform goals of closing Men's Central Jail and creating alternatives to incarceration. This motion will put LA County on track for dedicated action towards establishing a pretrial system that is a model for the State of California.

WE, THEREFORE, MOVE that the Board of Supervisors direct:

1. The Executive Director of the Alternatives to Incarceration Initiative (ATI) to collaborate with the Public Defender, Alternate Public Defender, District Attorney, the Indigent Criminal Defense Program, the Department of Public Health's Substance Abuse Prevention and Control Program, the Department of Mental Health, and the Department of Health Services' Correctional Health Services, hereafter collectively referred to as the "Pretrial Reform Workgroup", and to consult with the ATI Ad Hoc Pretrial Subcommittee, in conjunction with other ATI efforts, to:
 - a. Manage pretrial reform, consistent with recommendations in the Humphrey Report, in the short-term, by:
 - i. Developing a plan to analyze and implement Recommendations 2-5, 7-10, and 12-13 of the Humphrey

Report;

- ii. Developing strategies for successful collaboration with the Los Angeles Superior Court in a manner that acknowledges the respective roles of the County and the Court and leverages all available funds for robust and sustainable pretrial reform;
 - iii. Collaborating with the Los Angeles Superior Court to develop a community-based pretrial strategy that is consistent with the funding conditions outlined in Senate Bill 129 (2021);
 - iv. Developing strategies for successful collaboration with local cities and prosecutorial agencies in a manner that acknowledges the respective roles of the City, County, and the Court and leverages all available funds for robust and sustainable pretrial reform;
 - v. Developing strategies for successful collaboration with the Department of Probation in a manner that acknowledges the respective roles of the County and the Court and leverages all available funds for robust and sustainable pretrial reform;
and
 - vi. Leading the ATI Ad Hoc Pretrial Subcommittee in developing a community-based pretrial pilot that is focused on the needs and strengths of accused people, as well as return to court supportive services, and victim safety;
- b. Plan for pretrial reform in the longer-term by creating a phased plan

for the creation of an independent pretrial services organizational unit (Humphrey Report Recommendation 1); and

c. Report back to the Board on a quarterly basis with updates on the progress of these directives.

2. The Executive Director of the ATI, with input from the Pretrial Reform Workgroup, to (a) estimate the costs associated with creating a pretrial pilot and implementing the Humphrey Report recommendations, including the creation of an early representation program and the addition of necessary staffing at arraignment to assist with pretrial screenings and service linkage, (b) identify available funding sources, and (c) report back to the Board in 90 days (Humphrey Report Recommendations 6 and 14).
3. The Analytics Center of Excellence within the Chief Information Office and the Executive Director of ATI to:
 - a. Expand the stakeholders in the workgroup established by the August 4, 2020 motion entitled “Data Collection to Support Pretrial Reform in Los Angeles County” to include relevant stakeholders who were also consulted for the Humphrey Report;
 - b. Review any contracts for services, any plans for pretrial pilots, and all other pretrial reforms to ensure that proper data collection mechanisms are in place to publicly report program outcomes; and
 - c. Report back in the second quarterly report from the August 4, 2020 motion about the feasibility of collecting the data elements referenced in the Humphrey Report Recommendation 11 and with additional recommendations for how the County can study whether pretrial reforms result in racially or other disparate impacts.

(Humphrey Recommendation 11).

4. The CEO-Legislative Affairs to work with the Executive Director of the ATI to develop a statewide legislative advocacy strategy to secure State funding for County pretrial reforms and to secure flexibility in State law that permits LA County to identify and implement best practices for pretrial reform.

S:ShK/ImplementingHumphreyAndATIPretrialReforms