



Memorandum

TO: RULES COMMITTEE
SUBJECT: See Below

FROM: Councilmember Matt Mahan
DATE: 6/15/2022

Approved 

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SUBJECT: COORDINATION WITH THE COUNTY REGARDING REPEAT OFFENDERS

RECOMMENDATION

1. Direct the City Manager to determine, prior to spending any of the \$300,000 recently authorized by the Council for SJPD's arrest of re-offending pretrial defendants, whether and which suspects will actually be kept in custody upon their re-arrest. The City Manager should do so through meetings with the County Executive, Sheriff, and Presiding Judge of the Superior Court (and/or any of their designates, including the Office of Pretrial Services and the Department of Correction). The outcome of the meetings should enable the City Manager to ascertain to which category of repeat offenders SJPD should direct its scarce resources for re-arrest, to avoid wasting resources on the re-arrest of defendants likely to be re-released by the County or Court immediately upon booking.
2. Direct the City Attorney to determine:
 - a. Whether Santa Clara County's acceptance of the Superior Court's delegation of authority for post-booking pretrial release decisions to the County Office of Probation, Department of Correction, and Sheriff's Office in its Orders of [June 22, 2021](#), [February 23, 2022](#), and [May 9, 2022](#) is lawful under:
 - i. [Article I, Section 12 California Constitution](#) (providing "A person may be released on his or her own recognizance *"in the court's discretion,"* but making no provision for any agency other than a court),
 - ii. [California Penal Code Section 1270](#) (a) (providing, "Any person who has been arrested...or charged...may be released on his or her own recognizance by a court or magistrate who could release a defendant from custody upon the defendant giving bail," and
 - iii. other provisions of California law.
 - iv. Report the findings to the City Council, and return in Closed Session to assess what actions the City should take in response to those findings, including whether the City has standing:
 1. to pursue injunctive relief against the County, or

2. to pursue reimbursement from the County for the cost of re-arrest, and
- b. Whether the County's release of persons committing offenses more serious than those identified in the Superior Court's May 9, 2022 Order and identical prior orders constitutes an unlawful violation of that Order, as well as a violation of Article I, Section 28 (a)(4) of the California Constitution (providing "The rights of victims...are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of California that persons who commit felonious acts causing injury to innocent victims will be appropriately and thoroughly investigated, *appropriately detained in custody*,..."), or other provisions of state law.

BACKGROUND

I want to thank my Council colleagues for recently approving funding (via the 2022-2023 Operating Budget) to enable the San Jose Police Department (SJPD) to better address the high number of pretrial defendants who remain at large in the community despite violating the terms of their release by re-offending or failing to appear in court. This "revolving door" phenomenon makes our community less safe, undermines public trust in our justice system, and decreases San Jose's vibrancy and economic competitiveness. We must take more direct and aggressive action to intervene in the cycles of violence, addiction, and mental illness that unnecessarily harm far too many in our community.

However, before we spend these allocated taxpayer funds and expend considerable SJPD effort to apprehend repeat offenders, we should—at an administrative level—ensure that other partners in our criminal justice system are prepared to meet the City halfway. As is often noted, doing the same thing over and over again and expecting a different result is the definition of insanity. Well, between April 1, 2020 and June 30, 2021 our police force arrested 30 individuals in San Jose [ten or more times each](#). One individual was arrested 19 times. County data also reveals that currently roughly [50% of arrestees](#) who are released into the community pretrial violate the terms of their release within six months by reoffending or failing to appear for their day in court.

While there may have been good rationale for reducing jail populations in the early days of the COVID-19 pandemic, this policy is no longer justified on public health grounds. Moreover, it is obviously not working to support public safety as crime in San Jose increased [10.5%](#) last year and is on track to increase at a similar rate again this year. Our community members, from small business owners to concerned parents, expect their local government to hold accountable—and yes, provide rehabilitative services to—those who infringe upon their personal safety and property rights. One would be hard-pressed to find a community member who thinks it is acceptable for anyone to fail to appear for their court date or to reoffend repeatedly without consequence. Yet this is all too often the reality in our city today, sometimes with dire consequences as a lack of accountability enables disturbing escalation.

To share an illustrative example, in 2019, the Santa Clara County District Attorney (DA) charged [Kevin Jones](#) with domestic violence, the same crime for which he was later arrested in two other California counties in 2021. Each time, Jones was released, and each time he failed to appear in court. Tragically, on March 13, 2022, he invaded his parents' Alviso home and stabbed them both, killing his father.

Similarly, none of us will forget the murder of Bambi Larson in her own home by a total stranger who had been arrested and released over a [dozen times](#) for methamphetamine use, theft, and violent crime.

In November of 2020, and over the objection of the DA's office, a [29-year old](#) arrested for child molestation was released the very next day on his own recognizance. The defendant did not appear in court and instead fled to Texas. When SJPD and the DA's office extradited him back to Santa Clara County, he was released yet again, this time on bail, while the DA's objections once again fell on deaf ears.

More recently, here in District 10, we experienced a Home Depot fire allegedly set by an arsonist out on probation at the time despite having a series of active cases pending, including misdemeanor battery, petty theft, and illegal drug use. In the month prior to the incident, he was charged for petty theft and abuse of a controlled substance [three times](#) - most recently within days of the fire.

These are just a few stories that illustrate a wider pattern in our community, one that is as unnecessary as it is unacceptable. Those who argue that our jails should not be our primary providers of mental health care and addiction treatment are not wrong. In many cases, earlier intervention with appropriate treatment alternatives could have prevented future crime and suffering. We should absolutely invest in these alternative interventions, including secure drug treatment and mental health facilities. But the absence of such alternatives does not justify an informal "catch-and-release" policy that turns a blind eye to the avoidable harm done to innocent community members. (Moreover, our current approach does nothing to treat or rehabilitate those who perpetrate crime, many of whom are suffering from illness, addiction and trauma.)

Public safety and justice demand that we take a different approach. In addition to requesting that the County and the Superior Court detain pretrial defendants who are high-risk and/or repeatedly re-arrested, the City has an interest in determining whether or not the County's acceptance of the Court's delegation of authority for post-booking pretrial release decisions is even lawful. The California Constitution states that pretrial release decisions should be made at the sole discretion of the Court, which is no longer the current practice in our county. Since that delegation of authority took place, the situation on our streets has seemed to only worsen. We need to know if County administrative staff are unlawfully executing the Court's role and consider potential remedies.

As the City redoubles its efforts to keep the community safe, we need our partners in the criminal justice system—including the County Executive, Sheriff, and Presiding Judge of the Superior Court—to align with us around policies that work. Current policies that enable an extremely high rate of pretrial release, re-offense and failure to appear in court clearly do not work. Let's seek clarity—and ideally, a commitment—from our partners on who meets the criteria for pretrial detention before we spend more money apprehending repeat offenders who will simply be back on the streets within hours. Our community deserves a coherent and effective public safety strategy that protects the innocent, rehabilitates offenders and ensures accountability.