



County of Santa Clara
Office of the County Executive

112432

DATE: September 8, 2022

TO: Public Safety and Justice Committee

FROM: Greta S. Hansen, Chief Operating Officer

SUBJECT: Overview of the City, County, and Superior Court's Role in the Criminal Justice System

RECOMMENDED ACTION

Receive report from the Office of the County Executive relating to the City and County's role in the criminal justice system.

FISCAL IMPLICATIONS

There are no fiscal implications associated with receiving this informational report.

REASONS FOR RECOMMENDATION

At the request of Chair Ellenberg, the County's Public Safety and Justice Committee and the City of San José's Public Safety, Finance, and Strategic Support Committee are holding a joint meeting to discuss coordination between the City and County on the processes through which arrestees are either detained in jail or released to the community, as well as mental health crisis response. At this meeting, County Administration will present an overview of the pathways through which individuals arrested by local law enforcement are booked into the jail or released to the community while their case is adjudicated. Separately, the Behavioral Health Services Department and the San José Police Department will jointly present regarding emergency response teams and activation. The latter presentation will include information about how community members obtain mental health services and how law enforcement agencies can collaborate with behavioral health professionals for response to individuals needing assistance in the community.

As described in further detail below, our local criminal justice system is complex, multifaceted, and highly regulated by constitutional law, state statutes, and local policy set by cities, the County, and the Superior Court. The challenges faced by all stakeholders administering this system include an increasing number of community members struggling with mental illness, substance use disorders, and homelessness, which often bring these community members into contact with law enforcement and into the criminal justice system.

The county's criminal justice partners have a longstanding practice of coming together to address these and other challenges boldly and collaboratively, working in partnership to keep all members of our community safe and also ensuring the constitutional and statutory rights of arrestees and pretrial detainees are protected and respected. Key stakeholders in these criminal justice reform efforts include each city law enforcement agency, the Superior Court, District Attorney, Sheriff, Public Defender and other defense counsel agencies, Board of Supervisors, County Executive, County Counsel, Pretrial Services, Probation, and Reentry Services. These past and ongoing efforts include, but are not limited to the Bail and Release Work Group (BRWG), a Board of Supervisors-appointed commission that convened in approximately 2014 as a broad collaboration among criminal justice stakeholders, including city law enforcement, whose efforts culminated in a widely cited 2016 report, Attachment A *Bail and Release Work Group* which was presented to the Board on October 4, 2016 (Item No. 9) and can also be found online at http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=None&MeetingID=7200&MediaPosition=6595.761&ID=83351&CssClass=. The Work Group presented a set of 18 consensus-based policy recommendations which initiated a wide array of innovative efforts to improve pretrial supervision and release in the years that followed.

Further, there is ongoing participation in interagency, interdepartmental, and/or community working groups, commissions, and committees working in coordination with community stakeholders to focus on solutions to increasing access to services and treatment for community members and justice-involved individuals and their families, including the following bodies: Behavioral Health Board; Child Abuse Prevention Council; Community Corrections Partnership; Commission on the Status of Women's Jail Monitoring Program; Community Corrections and Law Enforcement Monitoring Commission; Domestic Violence Council; Human Trafficking Commission and Re-Entry Network. In addition to these public bodies, there are also a number of operational collaboratives between city, county, and court staff.

The issue of pretrial justice processes has also been the subject of statewide study and reform. In 2017, a Pretrial Detention Reform Workgroup convened by California's Chief Justice issued a comprehensive report (Attachment B *Pretrial Detention Reform Recommendations to the Chief Justice*) providing recommendations to assist courts in making release decisions focused on justice, fairness, public safety, and ensuring court appearances. Among the many principles the Chief Justice provided the Workgroup as a starting point was the idea that "[c]onsistent and feasible practices for making pretrial release, detention, and supervision decisions" should be a priority.¹

Below, we provide a basic overview of the arrest, jail booking, and detention or release processes, the bodies of law that regulate these processes, which agency or agencies are responsible for each step in the process, and those agencies' respective roles in that process.

¹ See Pretrial Justice Reform Workgroup, *Pretrial Detention Reform: Recommendations to the Chief Justice* (Oct. 2017), <https://www.courts.ca.gov/documents/PDRReport-20171023.pdf>

Background on the Arrest to Release/Detention Process

In the United States, a person who is arrested for a suspected criminal offense will either be detained in jail or released back to the community—either with or without criminal justice system supervision or other conditions imposed on that release—pending resolution of the criminal charges. The release decision is a critical one that must balance interests in public safety, compliance with court orders, and the defendant’s individual right to liberty. In balancing these interests in the context of several relevant constitutional protections, the United States Supreme Court has long held that “[i]n our society, liberty is the norm, and detention prior to trial . . . is the carefully limited exception.”²

In California, individuals who are arrested on criminal charges have four potential points of avoiding detention altogether or obtaining release from custody while their charges are pending:

- (1) at the point of arrest;
- (2) at the point of booking in the local jail;
- (3) after booking but prior to being housed in the jail; and
- (4) by seeking release at some other point during the adjudication process.

Arrest and Availability of Citation and Release

Many individuals charged with misdemeanor offenses can be released immediately following arrest or, in many cases, without an arrest. Immediate release can occur in three ways. First, the arresting law enforcement officer may decide not to arrest the individual, but instead to release them and submit a report to the District Attorney, who may issue a summons for the defendant to appear in court if the District Attorney decides to prosecute.

Second, an individual who is arrested may be issued a citation for the offense by the arresting officer, sign the citation promising to appear in court on the noted date and time, and then immediately be released.³ This procedure is known as “citation and release” or “cite and release.”⁴ The Penal Code states that individuals arrested for most misdemeanor offenses “*shall*” be cited and released, unless they meet any of the statutory “reason[s] for nonrelease, in which case the arresting officer *may* release the person” at their discretion, or may instead

² *United States v. Salerno*, 481 U.S. 739, 755 (1987).

³ Cal. Penal Code § 853.6.

⁴ As described further below, starting in April 2020 and continuing until July 31, 2022, the Judicial Council of California and the Santa Clara County Superior Court authorized an Emergency Bail Schedule that reduced monetary bail amounts in order to reduce the number of people being booked into California jails during the COVID-19 pandemic, with the goal of reducing the risk of disease transmission in crowded jail facilities. (See California Courts Newsroom, *California Counties Keeping COVID-19 Emergency Bail Schedules* (Jul. 10, 2022), <https://newsroom.courts.ca.gov/news/california-counties-keeping-covid-19-emergency-bail-schedules>.) Under the local orders of the Santa Clara County Superior Court, more offenses – most notably, almost all felony offenses with a scheduled bail amount less than \$25,000 – were also made eligible for cite and release by law enforcement officers in the field. (See, e.g., Superior Court of California, County of Santa Clara, *May 9, 2022 Order Authorizing Citation and Release of Certain Individuals Due to COVID_19 Pandemic*, https://www.sccourt.org/general_info/news_media/newspdfs/2022/Order%20Authorizing%20Citation%20and%20Release%20of%20Certain%20Individuals%20-%20Penal%20Code%201270%20-%20050922.pdf.) Those orders recently expired.

bring them to jail to be booked.⁵ The conditions for which the arresting officer may deny cite and release in the field include when an arrestee is so intoxicated as to pose a danger to themselves or others, requires medical examination, was arrested for certain traffic offenses, has outstanding arrest warrants, or could not provide identification; where cite and release would jeopardize the prosecution or there is reason to believe the arrestee would not appear for court dates; or where the arrestee demanded to be taken before a judge or refused to sign the promise to appear in court.⁶

Finally, if a person is not cited and released in the field because the arresting officer determines that the person qualifies for one of the statutory conditions to deny release, then the person may be arrested and taken to jail to be booked. At that point, unless they remain disqualified from cite and release under the statutes, they will be issued a citation by the Sheriff's Office booking deputy, ordered to appear in court, and released. This is a form of citation and release known as a "jail citation." Generally, when a person is denied cite and release in the field, then granted a jail citation by the Sheriff's Office upon transportation to the jail, that occurs because the person no longer meets one of the statutory criteria to deny release (e.g., they are no longer intoxicated to the point of being a danger to themselves or others), or because they did not meet the criteria in the first place (e.g., there initially appeared to be an outstanding warrant for the person, but upon further review administrative booking staff determined the warrant was resolved).

Prior to releasing an individual with a jail citation, County jail officials conduct a thorough review of a person's criminal records and pending court cases (if any), and additionally they often engage in proactive outreach to surrounding jurisdictions to determine the status of any warrants or holds. But the decision to issue a jail citation involves the application of statutory criteria, not an exercise of independent discretion.

Arrestees who do not qualify for cite and release may obtain immediate release after being processed by County jail officials by posting bail in a preset amount contained in the Superior Court of California's County of Santa Clara 2022 Criminal Bail Schedule (Attachment C), which is further discussed below.

However, even if an arrestee would qualify for cite and release in the field, a jail citation, or release on bail, the arresting officer has discretion to request "magistrate review," in accordance with California Penal Code § 1269c, if the "officer has reasonable cause to believe that the amount of bail set forth in the schedule of bail for that offense is insufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence."⁷ Magistrate review also occurs in certain other limited circumstances.

Following that review, the judge may order the bail amount being set at a higher or lower amount based on the individual arrestee's circumstances. This process is designed to

⁵ Cal. Penal Code § 853.6(i) (emphasis added).

⁶ *Id.* In addition, individuals arrested for certain misdemeanor offenses, such as domestic violence-related offenses and violations of protective orders involving domestic violence, may not be statutorily eligible for citation and release.⁶

⁷ *Id.* § 1269c.

allow an arresting officer to submit a sworn affidavit of probable cause to the court which flags an individual who would otherwise qualify for release, but who presents a unique concern or danger that the officer believes warrants further review by a judge to determine if release is appropriate.

Booking

After an individual is arrested, they may be “booked” – i.e., they will be fingerprinted and photo-processed, information about the arrest will be entered into criminal justice databases, and those databases will be searched for wants, warrants, and criminal history. As noted above, booking may occur at a city police station, but more commonly occurs at the County jail. Jail officials are required to book arrestees who are taken to jail, including those who are cited and released at the jail.⁸

Most arrestees who are not eligible for cite and release and who are booked at the jail may secure immediate release – if they can afford to do so – by posting bail at the jail in the amount set by the countywide bail schedule.⁹ Accepting bail and processing the arrestee for release prior to their first court appearance is a ministerial function performed by administrative booking staff, who do not have discretion to accept a bail amount set at anything other than the standard schedule value.¹⁰

An arrestee who posts bail will be released pending their initial court appearance. Most defendants released on bail bonds typically are under no formal supervision and are not required to comply with any individualized release conditions. Arrestees who do not post bail will remain in custody during this time period, unless they are released on their own recognizance as described below.

Judicial Review at Booking and/or Post Arraignment

Currently, within 12 hours of booking at the latest, but often sooner, a magistrate will review the affidavit of probable cause submitted by the arresting officer and determine whether there is probable cause to continue detaining the arrestee. If the arrestee is statutorily eligible, the magistrate will also determine, as discussed further below, whether to release the arrestee on their own recognizance or to raise or lower the bail amount set by the bail schedule. As discussed below, granting an own recognizance (OR) release to a person who has been arrested and booked into the County jails falls under the sole authority of the Superior Court, not the Office of Pretrial Services or any other County agency.

⁸ *Id.* § 853.6 (a)(1), (g).

⁹ See Superior Court of California, County of Santa Clara, *Criminal Bail Schedule*, https://www.sccscourt.org/court_divisions/criminal/bail.shtml. As noted above, during the years the Emergency Bail Schedule was in effect, the bail amount for a large number of low-level offenses was set at \$0. This meant that the jail was required to begin processing release for qualifying offenses immediately after booking, unless a law enforcement officer requested that a magistrate judge set higher bail under Penal Code 1269c. In that case, the jail could still hold the arrestee for up to eight hours while the magistrate reviewed the request.

⁹ Cal. Penal Code § 1269b(b).

¹⁰ Cal. Penal Code § 1269b(b).

At the initial court appearance, referred to as arraignment, defendants are informed of the crime(s) with which they are charged, advised of their constitutional rights, and appointed an attorney if they cannot afford one. If the charges are not resolved through a plea at this point, the judge must determine whether, and under what conditions, to release the defendant pending trial. The judge may set a bail amount which the defendant must post in order to obtain release from custody pending trial, release from custody without any money bail requirement, or in limited cases, deny release altogether and order the defendant to remain in custody pending trial. The judge also has broad discretion to impose non-financial conditions of release relating to the nature of the alleged offense and the defendant's criminal history, such as supervision by the Office of Pretrial Services or to issue a no contact order prohibiting the defendant from contacting the victim.

Bail

The California Constitution guarantees defendants a right to release on bail for nearly all criminal charges, with the exception of capital offenses, violent felony offenses, and felony sexual assault offenses.¹¹ The offenses for which bail is permitted are known as "bailable" offenses. The Superior Court judges for each county are charged with preparing, adopting, and revising annually a uniform countywide bail schedule for all bailable felony offenses, misdemeanor offenses, and non-Vehicle Code infractions.¹² By law, the bail amounts contained in the countywide bail schedule are presumptive fixed amounts that are set based on the Superior Court judges' general assessment of the seriousness of each offense type¹³; they do not include consideration of any individual factors relating to a specific defendant's risks of failing to appear in court and/or engaging in new criminal activity if released from custody prior to trial.

At any time, but usually during the magistrate's review following booking and again when a defendant appears in court with both the prosecution and defense counsel present, the judge has discretion to adjust the scheduled bail amount the defendant has posted. If the defendant has not yet posted bail by the initial appearance, the judge can also set an amount higher or lower than the scheduled amount and/or impose other conditions of release.¹⁴ In exercising its discretion to set bail in a particular case, the court must consider:

[T]he protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.¹⁵

¹¹ Cal. Const., art. I, § 12; *see also* Cal. Penal Code §§ 1270.5, 1271.

¹² Cal. Penal Code § 1269b(c).

¹³ *Id.* § 1269b(e).

¹⁴ *Id.* §§ 1269b(b), 1275.

¹⁵ Cal. Const., art. I, § 28(f)(3); Cal. Penal Code § 1275(a)(1). In assessing the seriousness of the offense, judges must consider any alleged threats or injury to victims or witnesses; alleged use of a firearm or other weapon; and alleged use or Board of Supervisors: Mike Wasserman, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian
County Executive: Jeffrey V. Smith
Agenda Date: September 8, 2022

Prior to 2018, California trial court judges were given little guidance on how to define or weigh each of these factors when assessing a defendant's risk of failing to appear in court and/or endangering public safety. But in the landmark decision *In re Humphrey*, the California Court of Appeal held in January 2018, and the California Supreme Court affirmed in March 2021, that imposing bail without first conducting an individualized review for each arrestee – specifically including an assessment of their ability to pay the bail amount set – violated the constitutional right to due process. The Supreme Court held that “conditioning freedom solely on whether an arrestee can afford bail is unconstitutional.”¹⁶ Following the *Humphrey* decision (Attachment D), judges are also required to consider what other conditions of release could ensure the arrestee appears in court and does not pose a risk to the public or victim safety. As the Supreme Court explained:

[O]ur Constitution prohibits pretrial detention to combat an arrestee's risk of flight unless the court first finds, based upon clear and convincing evidence, that no condition or conditions of release can reasonably assure the arrestee's appearance in court. In those cases where the arrestee poses little or no risk of flight or harm to others, the court may offer OR release with appropriate conditions. Where the record reflects the risk of flight or a risk to public or victim safety, the court should consider whether nonfinancial conditions of release may reasonably protect the public and the victim or reasonably assure the arrestee's presence at trial. If the court concludes that money bail is reasonably necessary, then the court must consider the individual arrestee's ability to pay, along with the seriousness of the charged offense and the arrestee's criminal record, and – unless there is a valid basis for detention – set bail at a level the arrestee can reasonably afford. And if a court concludes that public or victim safety, or the arrestee's appearance in court, cannot be reasonably assured if the arrestee is released, it may detain the arrestee only if it first finds, by clear and convincing evidence, that no nonfinancial condition of release can reasonably protect those interests.¹⁷

Own Recognizance (OR) Release

In lieu of setting a bail amount, judges also have discretion to release a defendant on OR, meaning that the defendant need not post any money but instead must sign a release agreement promising to appear for all scheduled court hearings and comply with any other conditions set by the court.¹⁸ An own recognizance release – known as an “OR” – is left to the court's discretion in felony cases, but most defendants who are accused of misdemeanor offenses are entitled to OR release unless the court finds their release “will compromise

possession of controlled substances. In cases involving drug-related offenses, the judge must also consider the amount of drugs involved and whether the defendant is currently released on bail for a similar offense. *Id.* § 1275(a)(2), (b).

¹⁶ *In re Humphrey* (2021) 11 Cal.5th 135, 143.

¹⁷ *Id.* at 154.

¹⁸ Cal. Penal Code § 1270(a).

public safety or will not reasonably assure the appearance of the defendant as required” at future court hearings (with the exception of certain misdemeanor domestic violence offenses).¹⁹ The court may also order a supervised OR release (SORP) that includes conditions beyond appearing for court dates. The conditions imposed will vary depending on the individual case, and may include mandatory drug testing, substance use or mental health treatment, electronic monitoring, or compliance with restraining orders. OR and SORP may be granted *only* by a judge – not by an arresting officer, a jail official, or the Office of Pretrial Services (which performs the factual assessments that assist the court in exercising its sole discretion).²⁰

Finally, in very limited cases involving capital offenses or a few serious felony offenses, the court may deny bail altogether and order the defendant to remain in custody pending resolution of the defendant’s criminal charge(s).²¹

Data on 2021 Jail Admissions and Releases in Santa Clara County

Over the past two years, the COVID-19 pandemic and measures taken to reduce the spread of the virus in the correctional setting has dramatically changed the composition of the jail population. Prior to the pandemic, bookings into the jail averaged approximately 60,000 per year and the daily inmate census was closer to 3,200.

On June 10, 2020, the Judicial Council rescinded the statewide emergency bail schedule, but the Santa Clara County Superior Court elected to extend the emergency bail schedule through July 31, 2022. This and other efforts to reduce the likelihood of COVID-19 transmission and outbreaks in the jails resulted in a significant reduction on the jail population, with a low census of 2,005 on September 5, 2020.

In recent months, however, the jail population has increased, particularly since emergency bail schedule has expired, and the ordinary local bail schedule set by the Superior Court is now back in effect as described above. As of August 31, 2022, the population in the jail is now 2,963, which is slightly below the average census in the jail in the months prior to the beginning of the pandemic in March of 2020.

Jail Admissions: In Santa Clara County, there were approximately 24,000 bookings at the County’s Main Jail in 2021. Of those, approximately 18,000 resulted in admissions into the county jails in 2021, of which 70% involved felony offenses and 30% involved misdemeanor offenses. This only includes those who were housed at the facility and

¹⁹ Cal. Penal Code § 1270(a).

²⁰ Cal. Penal Code §§ 1270, 1270.1. Senate Bill 10 (SB10), which was signed into law in 2018 and originally slated to take effect on October 1, 2019, would have effectuated significant changes to courts’ consideration of pretrial release decisions—including repealing existing laws regarding monetary bail, and requiring the use of pretrial risk assessment tools statewide. However, in early 2019, a ballot measure was certified for placement on the ballot to repeal SB10, staying its effective date, and in November 2020, through Proposition 25, California voters repealed SB10. Thus, the legislation did not take effect.

²¹ Cal. Const., art. I, § 12.

remained in custody for more than one day. Admissions only includes those who were housed at a county jail facility and remained in custody for more than one day.

Releases from Jail: In 2021 – excluding those cited and released in the field, released on jail citations, dismissed, or transferred to state prison – approximately 24,000 releases from the county jail facilities were processed. 32% of defendants were released on bail or because their offense was a “zero bail” offense; approximately 3% were released on their own recognizance, and 13% with supervision conditions; and approximately 52% either remained in jail throughout the adjudication process because they were ordered detained or because they did not or could not make bail, or were released by the court, usually after sentencing.

Role of Each Agency Involved in the Arrest to Release/Detention Process

As referenced above, a number of criminal justice officials play a role in release determinations in Santa Clara County.

First, law enforcement officers – i.e., city police departments and the Enforcement Bureau of the Sheriff’s Office – play an initial role in the bail and release process by exercising discretion over whether to arrest an individual in the first instance; when to submit a report to the District Attorney; whether to cite and release an arrested individual in the field; or whether instead to bring an arrestee to jail for a jail citation and/or booking. The Sheriff’s Office and 12 other law enforcement agencies operate within Santa Clara County. The Santa Clara County Police Chiefs Association has adopted Recommended Standardized Intake and Release Guidelines (Attachment E) intended to achieve consistency in the implementation of cite and release practices in the field and to reduce costs by ensuring that officers do not unnecessarily transport arrestees for booking and processing at the County’s Main Jail. Under the guidelines, arresting officers retain a fair amount of discretion.

Second, the Office of the District Attorney prosecutes crime within Santa Clara County and exercises its independent discretion, conferred by state law, regarding whether to bring charges against an arrestee and what charges to bring. After a defendant has been arrested, the District Attorney can affect release decisions in a number of ways. Following arrest, and typically before arraignment/initial court appearance, the District Attorney will undertake an initial screening of the case and may determine that charges should be not be filed or that the charges for which the defendant was arrested should be reduced, amended, or added. In such cases, the defendant may be released (if charges are dropped) or eligible for release on a lower bail amount (if charges are not filed). Historically, the District Attorney’s Office has also made recommendations to the court regarding appropriate bail amounts, whether the defendant is a suitable candidate for OR or SORP, and suggested conditions of release. Recently, the District Attorney has announced that his office will no longer advocate for monetary bail and will likewise not provide a recommendation on conditions of release. However, the District Attorney’s Office will advocate primarily for pretrial detention in cases where it believes detention is necessary to ensure public safety or the defendant’s appearance

in court or for reasonable release conditions to achieve the same goal. Due to the current state of the law on bail in California, in cases where a judge is reluctant to order pretrial detention without some opportunity for bail, the District Attorney's Office may advocate for a high bail with the express purpose of holding a dangerous defendant in custody pending trial.

Third, the Public Defender's Office provides representation to defendants accused of crimes in Santa Clara County who are financially unable to hire an attorney at their own expense. Public defenders are present at arraignments (initial court appearances), represent defendants during release determinations, and now provide legal advice and representation to defendants prior to their arraignments under its relatively new Pre-Arrestment Representation and Review (PARR) project. A public defender may advocate for her client's release on her own recognizance (OR) or Supervised OR, where appropriate, and seek to assure that any bail amount set by the court comports with the *Humphrey* decision; *Humphrey* entitles each defendant to an individualized determination regarding his ability to afford bail and whether there are less restrictive alternatives to incarceration that reasonably assure his return to court and protect public safety. Under Penal Code section 1269c, public defenders may provide release information to the night or duty judge that first sets bail. Those initial bail decisions are made after booking but before arraignment (first court appearance).

Fourth, as described above, the Custody Bureau of the Sheriff's Office determines whether a jail citation should be issued and the arrestee immediately released. No discretion is involved in the booking deputy making this determination; consistent with state law, an inmate arrested on a misdemeanor charge (typically with a bail amount of \$5,000 or less) generally should be issued a jail citation unless the arresting officer finds the inmate's release would pose an imminent danger to public safety; the charge involves violence or firearms with a prior similar conviction, certain Vehicle Code violations with a prior case or conviction, domestic violence, or a probation violation; or the inmate is intoxicated, unable to identify or care for or identify himself, or unwilling to sign a promise to appear in court if released. This determination is made by applying the state laws governing eligibility for citation and release, as described above.

Fifth, the judges of the Santa Clara County Superior Court – in addition to setting the uniform countywide bail schedule as discussed above – are responsible for determining whether each individual defendant may be released prior to trial and on what conditions. If a defendant has neither been cited and released nor posted bail, the court typically makes a release determination during magistrate review within 12 hours of booking and at the defendant's initial court appearance or arraignment. In making a release decision, judges must weigh the potential risk of flight and threats to public safety against the presumption of innocence and the right to liberty. The judge takes into consideration the information provided by the Office of Pretrial Services (discussed further below), the defendant's criminal history, the nature of the charges, and other relevant information. Arrestees held in custody must be brought before a judge for arraignment/initial appearance within 48 hours of arrest, excluding weekends and holidays.

Finally, the County's Office of Pretrial Services provides information to the court that

informs its decision on whether to detain or release defendants. Pretrial Services (PTS) operates in the lower booking area of the Main Jail 24 hours per day, 7 days per week, 365 days per year. PTS reviews the criminal histories for all arrestees who are brought to jail and not released by the Sheriff's Office with a jail citation. PTS interviews arrestees, investigates their backgrounds, and assesses relevant risks utilizing the Santa Clara County Pretrial Risk Assessment Instrument (SCCPRAI), the Public Safety Assessment (PSA), the Ontario Domestic assault Risk Assessment (ODARA), and when and if it is available, conveys a law enforcement-provided victim lethality assessment. With this and additional information often provided by public safety and justice partners, alleged victims and community members, PTS provides reports to the Superior Court to make informed decisions which may include supervised release plans and/or detention decisions. PTS also performs prior-to-release electronic monitoring installations and completes client intakes for Court orders requiring Home Detention, GPS, Continuous Alcohol Monitoring and Remote Breath Alcohol Monitoring.

At booking, pretrial services officers interview all defendants booked into the jail on felony charges or on misdemeanor charges that are not eligible for immediate cite and release.²² Based on the information they obtain through an interview with the arrestee and based on criminal history records, pretrial services officers present information to the court regarding the defendant's criminal history and likelihood of appearing at subsequent court dates, including a pretrial risk assessment.

For persons whom a judge decides to release on SORP, PTS provides pretrial supervision services, such as court reminders, referrals to county services, electronic monitoring, drug testing services. For defendants released on OR, PTS may also assist with making reminder calls or sending reminder letters for future court dates and checking criminal histories to monitor compliance on behalf of the court.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

At the request of Chair Ellenberg, the County's Public Safety and Justice Committee and the City of San José's Public Safety, Finance, and Strategic Support Committee are holding a joint meeting to discuss coordination between the City and County on the processes through which arrestees are either detained in jail or released to the community, as well as mental health crisis response. At this meeting, County Administration will present an

²² Pretrial services officers began interviewing misdemeanants approximately six months ago. Until that time, they interviewed only felony defendants.

overview of the pathways through which individuals arrested by local law enforcement are booked into the jail or released to the community while their case is adjudicated. To provide historical information on the arrest to detention/release work and statutory considerations, the following are also attached to this report:

Attachment A: Bail and Release Work Group

Attachment B: Pretrial Detention Reform Recommendations to the Chief Justice

Attachment C: 2022 Criminal Bail Schedule

Attachment D: *Humphrey* Decision

Attachment E: Intake and Release Policy

CONSEQUENCES OF NEGATIVE ACTION

The Public Safety and Justice Committee would not receive this informational report.

ATTACHMENTS:

- Attachedment A Bail and Release Work Group (PDF)
- Attachment B Pretrial Detention Reform Recommendations (PDF)
- Attachment C Criminal Bail Schedule 2022 (PDF)
- Attachment D Humphrey Decision (PDF)
- Attachment E Intake and Release Policy (PDF)