

# OVERVIEW OF THE PROCESS FROM ARREST THROUGH RELEASE/DETENTION IN THE CRIMINAL JUSTICE SYSTEM IN SANTA CLARA COUNTY

County of Santa Clara  
Public Safety and Justice Committee

Joint Meeting with San José Public Safety, Finance and  
Strategic Support Committee

September 8, 2022

# THE PROCESS FROM ARREST THROUGH RELEASE/DETENTION

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# CRIMINAL JUSTICE PARTNERS

- City Law Enforcement Agencies (LEA) and Sheriff's Office Enforcement Bureau
- Dept. of Correction – Admin Booking
- Sheriff's Office Custody Bureau
- Office of Pretrial Services
- District Attorney's Office
- Public Defender/Alternate Defender
- Other Criminal Defense Counsel
- Probation Department
- Superior Court (State of California)
- County Health Services & Treatment
- City & County Housing Services
- Community-Based Organizations Providing Services & Treatment
- Office of Reentry Services

# CONTEXT

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**Our criminal justice system is complex and highly regulated by constitutional law and state statutes. It is also affected by local policy set by the Superior Court, law enforcement agencies, and others.**

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**Under state and federal law, freedom while charges are pending is the rule; pre-trial detention can only be ordered by the Superior Court, and only under limited circumstances.**

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**There have been significant changes in state law regarding who can lawfully be held in custody pre-adjudication.**

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**The COVID-19 pandemic required significant reduction to the jail population to protect inmates and jail staff.**

# CONTEXT (cont.)

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The statewide and local emergency “\$0 bail” orders were issued in 2020, the last of which recently expired in Santa Clara County.

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The pandemic significantly worsened backlogs in criminal court, causing delays that have resulted in longer pre-trial detention.

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The County’s jails are the subject of two consent decrees, with compliance monitored by the U.S. District Court.

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The jail facilities are antiquated. Providing required treatment, out-of-cell time, and other critical services grows increasingly challenging as the population rises.

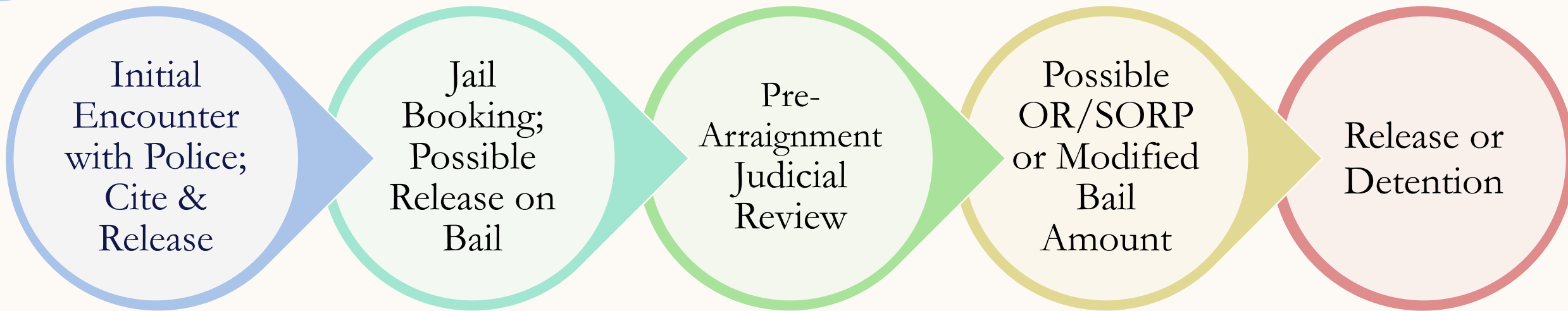
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Many community members are struggling with mental illness, substance use disorders, and homelessness, which often bring them into contact with law enforcement and into the criminal justice system.

# SHARED GOALS

- Protecting community safety and wellbeing
- Ensuring all arrestees and criminal defendants are afforded due process
- Operating a just, equitable, lawful, and efficient criminal justice system
- Decreasing unnecessary pretrial detention
- Ensuring that mental illness, substance use disorder, and homelessness are not criminalized
- Fostering effective communication and collaboration between criminal justice stakeholders

# OVERVIEW OF ARREST TO RELEASE/DETENTION PROCESS



# OPPORTUNITIES FOR RELEASE AT OR AFTER INITIAL ENCOUNTER WITH LAW ENFORCEMENT

Four potential points where an arrestee may obtain release from custody while criminal charges/adjudication are pending:

1. at point of initial encounter with law enforcement;
2. at point of booking at the jail;
3. after booking but pre-arraignment; or
4. by seeking release at some other point in adjudication process.



# 1. Initial Encounter: Arrest/Potential for Citation and Release

## Key criminal justice partners involved:

*Law enforcement agency:*  
arresting officer in the  
field (city police, Sheriff's  
Office Enforcement  
Bureau) encounters  
individual, determines  
whether to cite and  
release or arrest and  
transport.

## STATE LAW

- Under the Penal Code, law enforcement officers **MUST** cite and release most misdemeanor arrestees.
- Exception: if law enforcement determines arrestee meets a statutory “reason for nonrelease”:
  - intoxication
  - need for medical care
  - outstanding arrest warrant
  - inability to provide ID
  - release would jeopardize prosecution
  - reason to believe arrestee would abscond
  - arrestee demands to be taken before a judge or refuses to sign citation
- Arresting officer still may release someone under these circumstances at their discretion or may bring arrestee to jail to be booked.
- Anyone arrested for a felony is taken to jail to be booked.

# 1. Initial Encounter: Arrest/Potential for Citation and Release (cont.)

Key criminal justice partners involved:

*Law enforcement agency:* arresting officer in the field (city police, Sheriff's Office Enforcement Bureau) encounters individual, determines whether to cite and release or arrest and transport.

## LOCAL POLICY IMPACTS

- **2017 Countywide Intake and Release Guidelines**
  - Goal to standardize cite and release practices for misdemeanors in the field across LEAs.
  - Under the guidelines, anyone arrested for a misdemeanor offense for which bail would be up to \$15,000 should be cited and released, and not taken to jail for booking.
- **Superior Court Emergency Cite and Release Orders**
  - From April 2020 through July 2022, the Santa Clara County Superior Court also authorized law enforcement "to issue citations in the field" for felony offenses with scheduled bail up to \$25,000.

## 2. Booking in Jail/Potential for Jail Citation

### Key criminal justice partners involved:

- *Arresting agency:* officer transports to jail, may document reason for non-release
- *Sheriff's Office Custody Bureau:* booking deputy determines whether to issue a jail citation

### STATE LAW

- Jail citations are the same thing as cite and release in the field but occur at the point of booking.
- Subject to very same Penal Code requirements as field citations.
- The Sheriff's Office issues jail citations for misdemeanor arrestees with bail schedule amount of < \$15,000, a policy adopted in consultation with local law enforcement agencies in 2017 (*Intake and Release Guidelines*).
- *Why might someone be brought to jail rather than cited in the field, but then cited and released at booking?*
  - Statutory "reason for nonrelease" no longer applies so state law mandates citation, e.g.:
    - arrestee no longer intoxicated
    - arrestee now agrees to sign citation
    - record check shows no outstanding warrants

### 3. Release Options Immediately After Booking

#### Key criminal justice partners involved:

- *Admin Booking*: accepts bail and processes arrestee for release
- *Pretrial Services*: gathers info to help inform judges' release decisions
- *Superior Court*: makes decisions about bail; can grant release

#### RELEASE ON BAIL AT JAIL

- California Constitution guarantees right to release on bail for nearly all charges (exceptions are capital offenses, violent felonies, felony sexual assault).
- Superior Court issues annual countywide bail schedule.
- Acceptance of bail by jail staff for release after booking: *non-discretionary*, solely at pre-scheduled amount.
- Anyone arrested for a serious, violent, or DV offense who is unable to afford scheduled bail is not eligible for release before arraignment.

#### WHAT ABOUT \$0 BAIL?

- These emergency orders were in effect from April 2020 through July 2022, but have now expired.
- At the outset of the pandemic, statewide \$0 bail orders were issued to reduce local jail populations.
- Our Superior Court's \$0 bail orders allowed judges to set higher bail in individual cases (including for \$0 bail offenses)

# 3. Release Options Immediately After Booking

Key criminal justice partners involved:

- *Arresting officer*: can request “magistrate review” at booking
- *Admin Booking*: accepts bail and processes arrestee for release
- *Pretrial Services*: gathers info to help inform judges’ release decisions
- *Superior Court*: makes decisions about bail; can grant release

## “MAGISTRATE REVIEW”

- Arresting officer can request “magistrate review” before any release can occur, but only if they have “reasonable cause” to believe scheduled bail amount “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.”
- Per statute, Sheriff’s Office can hold the person for up to 8 hours for the magistrate’s review, after which it must process a release for the arrestee if they post the scheduled bail amount.
- Court determines whether to release based on factors outlined in the Penal Code for bail releases and/or own recognizance releases. In making release decisions, judges weigh the potential risk of flight and risk to public safety against the presumption of liberty.

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## COURT-APPROVED RELEASES:

- Pretrial Services gathers and provides information for the court, including criminal history, other pending charges, history of court appearances, social support system information, and risk assessment tool results
- Have a “duty” judge conducting reviews around the clock
- Releases for arrestees booked into jail and who don't post bail can be granted ONLY under authority of the Court
- Own Recognizance (OR) Release And Supervised Own Recognizance Release Program (SORP)
  - OR: defendant released without conditions
  - SORP: Judge imposes conditions such as electronic monitoring, drug monitoring and testing, restraining order compliance, and service referrals
- For misdemeanors, defendant is entitled to OR under the Penal Code unless the court finds their release “will compromise public safety or will not reasonably assure the appearance of the defendant as required” at future court hearings.
- Court can add supervision requirement and conditions to the OR release (SORP).



## 4. Options During the Adjudication Process

### Key criminal justice partners involved:

- *Superior Court*: makes release and/or detention decisions
- *District Attorney*: does not advocate for bail but seeks release conditions or detention in cases it deems appropriate
- *Public Defender/ criminal defense agencies*: advocate on behalf of defendant, including seeking reduced bail, nonmonetary releases

### **RELEASE WITH NO CHARGES FILED**

- District Attorney reviews cases and may elect to file at a reduced or no charge, which could lead to a release or change in bail amount

### **RELEASE ON BAIL**

- Judges retain discretion to depart upward or downward from the scheduled bail amount while charges are pending.

### **RELEASE WITH CONDITIONS**

- Judges have discretion to later grant OR/ SORP even after initial detention.

### **DETENTION ORDERS**

- Court has ability to order detention if done consistent with the California Constitution and *Humphrey* decision.

# RECENT LEGAL REQUIREMENTS AND REFORM EFFORTS

2016

- Bail and Release Work Group Reforms Begin

2017

- Judicial Council Recommendations
- Intake & Release Policy Revision

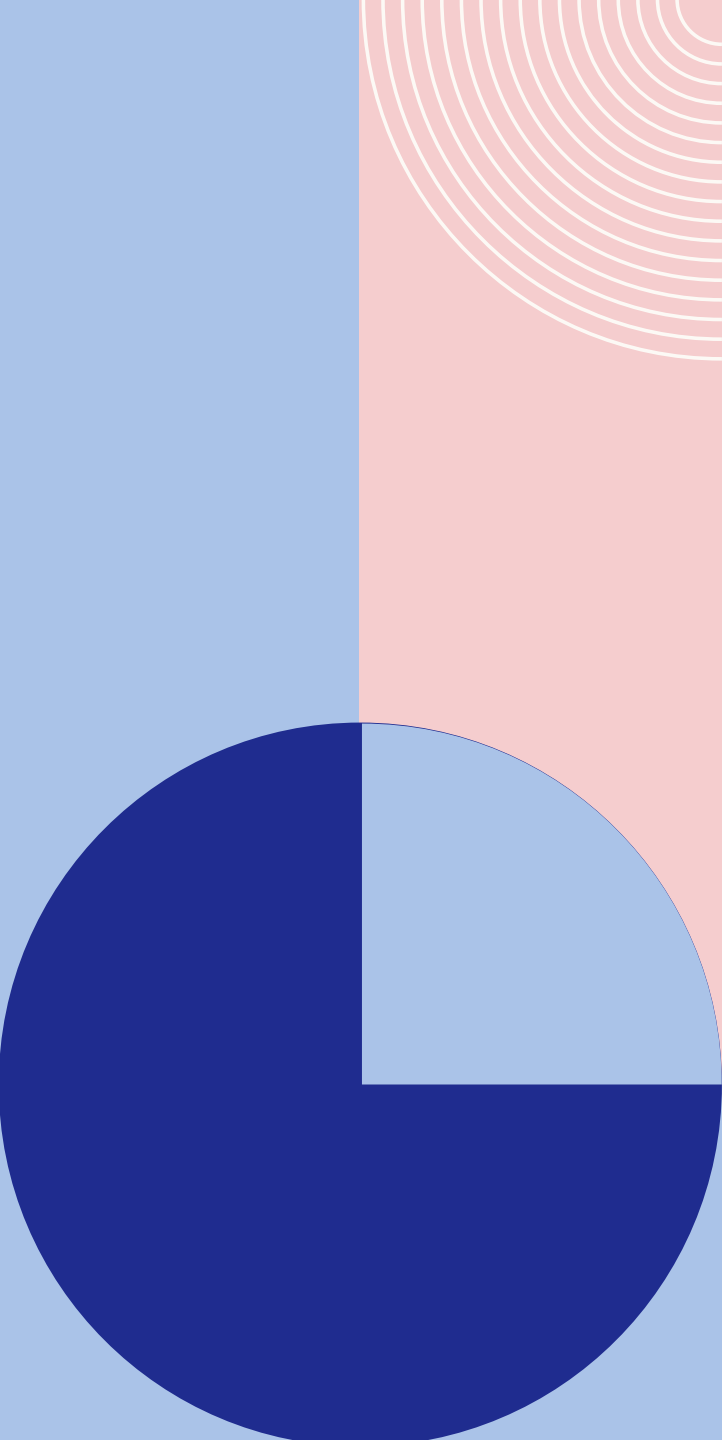
2018 - 2021

- *Humphrey* decisions and implementation

2020 - 2022

- Emergency Bail Orders



A decorative graphic on the left side of the slide. It features a large circle in the bottom-left corner, divided into two equal halves by a vertical line. The left half is dark blue, and the right half is light blue. Above this circle, there are several concentric white circles on a light pink background, which is itself on a light blue background.

# FEDERAL CLASS ACTION CONDITIONS

- County is subject to two consent decrees—federal court orders requiring compliance with remedial plans that comprehensively provide for remediation of constitutional or statutory violations.
- County must achieve substantial compliance with each of the 200+ items in the remedial plans for each case.

# FEDERAL CLASS ACTION CONDITIONS (cont.)

## Chavez Case



Medical, Mental Health, and Dental Care



Suicide Prevention



Use of Force, Solitary Confinement, and  
Disciplinary Practices



Vision, Hearing, Speech, and Cognitive  
Disabilities

## Cole Case

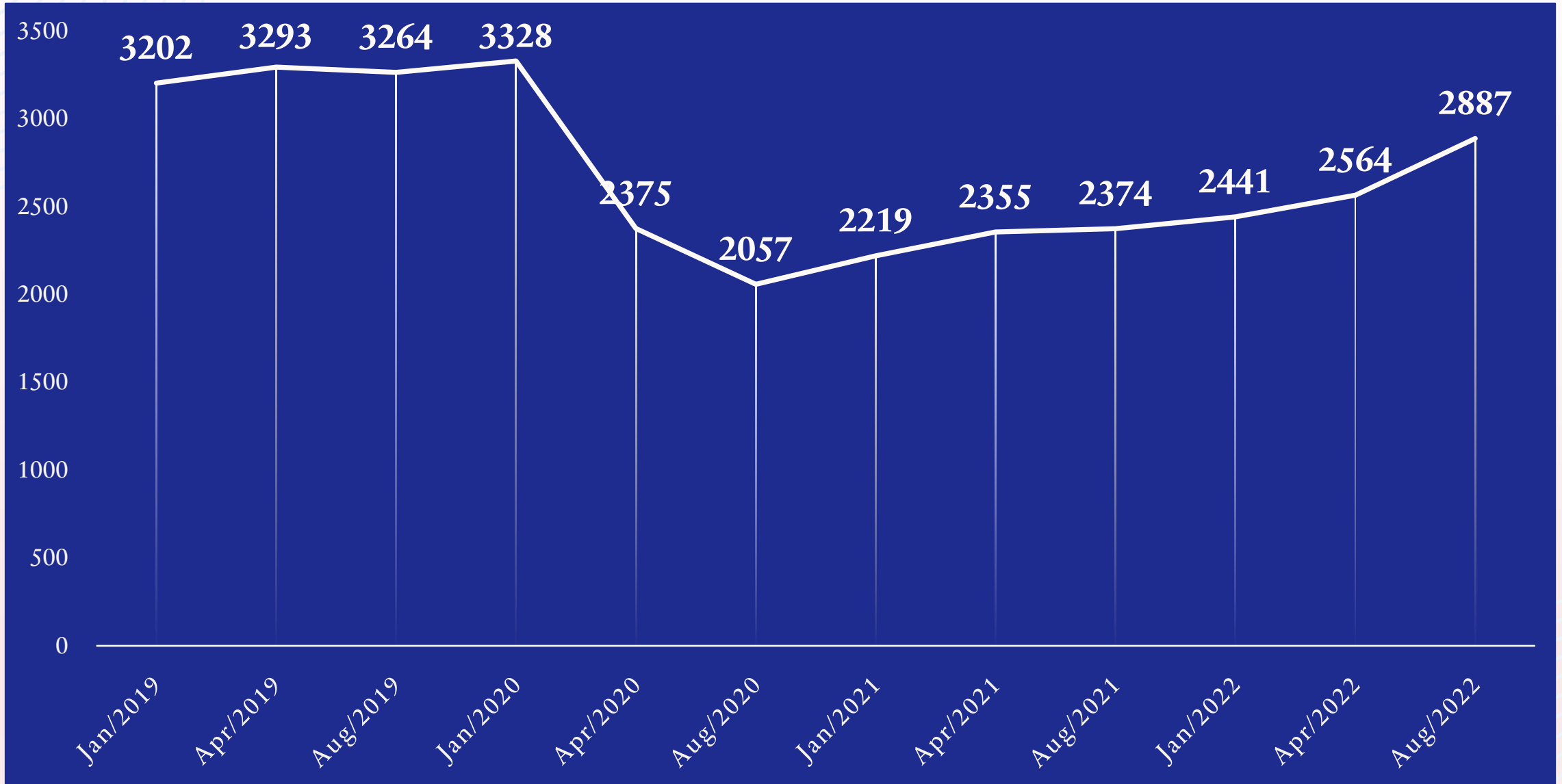


Mobility Disability – Structural  
Barriers



Mobility Disability – Operational  
Barriers

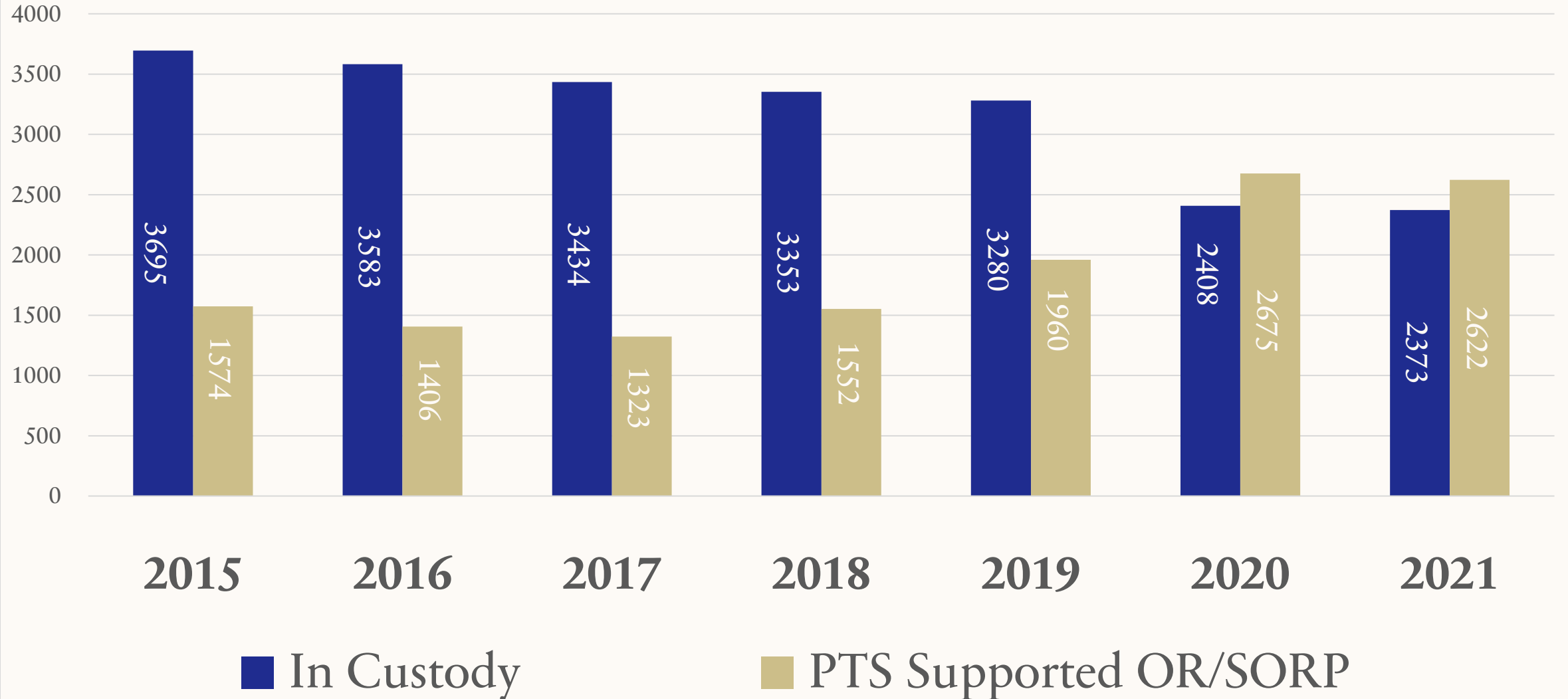
# Average Monthly Jail Population\*



Jail Population on August 31, 2022 : 2,963

\* Does not include people released on bail or via cite & release

# Average Justice Involved Population\*



\* Does not include people released on bail or via cite & release



# THANK YOU