

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS
TUESDAY, OCTOBER 19, 2021**

MINUTE ORDER NO. 3

SUBJECT: A DATA-DRIVEN APPROACH TO PROTECTING PUBLIC SAFETY, IMPROVING AND EXPANDING REHABILITATIVE TREATMENT AND SERVICES, AND ADVANCING EQUITY THROUGH ALTERNATIVES TO INCARCERATION: BUILDING ON LESSONS LEARNED DURING THE COVID-19 PANDEMIC (DISTRICTS: ALL)

OVERVIEW

Mass incarceration disproportionately impacts the poor, homeless, mentally ill and people of color and does not make us safer. Inappropriate and ineffective incarceration of individuals who do not pose a public safety threat generates significant costs for society, taxpayers, individuals, and families - often leading to tragically preventable jail deaths and failing to keep our communities safe, while people in crisis do not get the help they need.

Statewide and locally, taxpayers spend \$81,000 a year to incarcerate someone with a mental health illness versus \$32,000 a year for permanent supportive housing in the community, or \$3,000 to \$10,000 a year for an outpatient sobering program.

There is a clear feedback loop between interactions with the criminal justice system and substance use, mental illness, disability, poverty, structural racism, and homelessness. The evidence is overwhelming that for many offenses, there are alternatives to incarceration that are better both for keeping our communities safe and supporting and rehabilitating individuals. For example, in San Diego County, the Prosecution and Law Enforcement Assisted Diversion Services (PLEADS) program has shown early initial success at sobering and rehabilitating people with substance use challenges who otherwise would have been incarcerated.

Yet we do not have the infrastructure to respond to the need and instead, our jails have been filling the gap. In San Diego County, there were 3,971 individuals experiencing unsheltered homelessness on a single night in 2020. Many are in need of psychiatric care. Despite the demand, we have only 800 inpatient psychiatric beds, which are consistently at an over 90% utilization rate. The optimal utilization rate for inpatient facilities is 84%. Our jails should not be the largest mental health facilities in the County. In addition, specific service gaps in substance use treatment are unknown but widely perceived by public safety officials and community members as severe.

There is an urgent need for increased access to a range of harm reduction, treatment, and recovery services across San Diego County. Connecting people to community-based services can save money for taxpayers, promote better outcomes for individuals, and enhance community safety.

The United States has an incarceration rate more than five times the world's average. It is home to nearly 25% of the world's incarcerated people, despite having only 5% of the world's population. The scale of mass incarceration in this country means that nearly one in two American adults has an immediate family member who is or was incarcerated. And some communities are more impacted than others; for example, people of color are disproportionately incarcerated, with Black people being 3.6 times more likely to be incarcerated in local jails than white people.

Rather than leading to greater community safety, the overreliance on incarceration-starting with jails-has instead devastated lives, families, and communities. Research has shown that even two days in jail can result in more, not less, future contact with the criminal justice system. In fact, the experience of incarceration can be so destabilizing to a person's employment, housing, and family ties, it makes them more vulnerable to future arrest and more likely to rely on a fragile social safety net. An individual's incarceration often has financial and health consequences for their loved ones. Two in three families touched by incarceration are unable to meet their basic needs while a family member is incarcerated. Mothers with incarcerated partners are at a heightened risk of experiencing a major depressive episode, and children with an incarcerated parent are at increased risk of various health problems commonly associated with adverse childhood experiences, including post-traumatic stress disorder.

People struggling with mental illness have died in jail. San Diego County has seen a 10-year average of 74.8 suicides per 100,000. A 2018 report by the nonprofit Disability Rights Organization (DRO) blamed jail deaths on an over-reliance on incarceration for the mentally ill as well as a failure to provide adequate mental healthcare to those in custody. And most recently, the State Assembly Joint Legislative Audit Committee opened an investigation into the San Diego County jails because of the number of in-custody deaths. Over the course of 13 months, the county paid out over \$14 million in settlements involving the Sheriff's Department, including allegations around lapses in medical care and deaths in jail.

This contemporary state of incarceration is the result of using jail as a first line response to issues like homelessness, poverty, substance use, and mental health. The deinstitutionalization of psychiatric facilities in the 1980's abandoned members of our community in need and directly caused significant increases in incarceration. Now people with mental illnesses are by default directed to either emergency rooms or jailed, neither of which is an appropriate setting for recovery. Instead, we must explore expanding the capacity for alternatives such as secure psychiatric facilities, Mental Health Rehabilitation Centers, and 24-hour facilities for individuals who need a high level of care. Likewise, recovery from a substance use disorder is not a one-size-fits-all approach, so the Behavioral Health Continuum of Care must employ a variety of treatment mechanisms and settings to meet individual needs, and low-threshold programs that do not exclude participation should be prioritized in solutions as we know that relapse is an expected part of the recovery process.

Communities across the country are working to safely reduce the number of people in jails through data-informed, evidence-based measures. This includes investing in often underfunded community-based resources outside of the traditional justice system, including supportive services, counseling, treatment, and workforce development; reexamining enforcement practices and the money bail system; and creating the infrastructure to divert people to alternatives to incarceration. These approaches help prevent harm in the community, support rehabilitation, and ensure that incarceration is used as a last resort.

Locally, we can begin to improve our public safety system by analyzing the collaboration between the sheriff, district attorney, local law enforcement, courts, and other justice partners to implement several practices that quickly reduced jail populations during the COVID-19 pandemic. According to the San Diego District Attorney, there was an average daily incarcerated population of 4,197 in 2020, which was a 25% decrease from 2019 when jail populations averaged 5,630. The DA also stated that in the first half of 2021, with some of these policies continuing under the public health emergency, the number of people in custody fell even lower, with around 3,800 people in custody on any given day.

Instead of returning to “business as usual”, we have the opportunity and the moral imperative to examine the data to identify better approaches, with the objective of reducing our structural over-reliance on incarceration as a first line response when alternative treatments and services can address the root causes of justice system involvement and promote public safety in a more cost-effective and humane way.

This Board action intends to identify the primary drivers of reduced incarceration rates during COVID-19, disaggregate the population affected, analyze outcomes associated with these short-term changes in incarceration policy, and recommend policy changes to safely and permanently reduce jail populations and better protect public safety with alternatives to incarceration.

There is an emerging level of agreement among all stakeholders that there are better, alternative options to jail for some individuals. This action seeks to gather data and stakeholder input to define what those alternatives to jail should be and how they will be funded.

Today’s action will authorize research and analysis for San Diego County, in close consultation with public safety partners and community-based stakeholders. The analysis should include a review of jail and law enforcement data, research on best practices for diverting individuals from custody who can be served in community-based settings rather than jails, and a “gap analysis” to identify current gaps in treatments, facilities, and programs that could better serve our community as an alternative to incarceration.

RECOMMENDATION(S)

SUPERVISOR TERRA LAWSON-REMER

1. Direct the Chief Administrative Officer to contract with an Independent Consultant(s) to: conduct the 2-pronged research described below in (B) and (C), gather stakeholder input, and conduct working groups and open community forums to support this analysis.
 - a. Report to the Board as follows:
 - i. *March 15th, 2022*: Preliminary Report -- Analysis and recommendations that could be adopted and implemented in the FY 2022-2023 budget
 - ii. *May 24th, 2022*: Initial Interim Report and Recommendations
 - iii. *October 25th, 2022*: Draft Comprehensive Report and Recommendations
 - iv. *February 1st, 2023*: Final Comprehensive Report -- Recommendations that could be adopted and implemented in the FY 2023-2024 budget, five year plan, and subsequent budget cycles
 - b. Return to the Board of Supervisors with a data-driven analysis on how the use of jails changed from January 1, 2018 (pre-COVID-19) versus present time (during COVID-19, with a focus on identifying policy interventions that would most effectively, safely, and permanently reduce the San Diego jail populations. The goals of this prong of the research are: to identify the primary causal policy change drivers of reduced incarceration rates during COVID-19, disaggregate the population affected by these policy changes, analyze outcomes associated with these short-term changes in incarceration policy, and recommend policy changes to safely and permanently reduce jail populations and better protect public safety with alternatives to incarceration. The report must consider the research questions below, contingent on the receipt of responsive and timely data:

- i. The policies that may have influenced the decrease in the jail population during COVID-19 (e.g. zero dollar bail, changes in supervision violation policies). How did the jail population and jail incarceration rates change, overall and for particular subpopulations (e.g. women, pretrial, race/ethnic groups, etc.)?
- ii. What proportion of the population are pretrial, sentenced, in on supervision violations, holds, etc.? Comparing pre-Pandemic vs. Pandemic time periods.
- iii. What is the percentage of people in the mental health population and what is the distribution of mental health acuity level? What are the most common charges people with mental health conditions face? Is their length of stay different than the overall population?
- iv. What are the most common charges people face who are in jail, and how did this change during the Pandemic? Comparing the jail make-up based on a typology of charges Pre-Pandemic vs Pandemic? Comparing the population of people booked vs cited based on a typology of charges, Pre-Pandemic vs Pandemic?
- v. The rate at which populations not incarcerated due to booking changes driven by the Public Health emergency committed new crimes compared to similar populations in prior years. Include in the analysis the percent of new crimes that are serious or violent.
- vi. Direct that the analysis focus on, but not be limited to:
 1. Low-level offenses (such as public intoxication, encroachment, loitering, illegal lodging) that resulted in citations and/or book and release rather than incarceration during the pandemic.
 2. Pre-trial defendants: Individuals who would otherwise have been booked into jail but were not booked because of the COVID-19 booking policies.
 3. Individuals who were permitted to remain out of custody on Sheriff's pre-trial CPAC, who otherwise would have remained in custody. Individuals released from custody and monitored by Sheriff's pre-trial services ("Supervised Own Recognizance"), who otherwise would have remained in custody.
 4. Persons diverted through Mental Health Diversion, including but not limited to Parole Re-Entry Court, Drug Court, Veteran's Court, Behavioral Health Court. Compare the recidivism and other outcomes of persons diverted to these programs with outcomes for similar individuals who were incarcerated.
- c. Return to the Board of Supervisors with a set of comprehensive recommendations for short- and long-term actions and investments to expand access to alternatives to incarceration for justice involved individuals who do not pose a public safety threat.
 - i. The recommendations should be informed by the data analysis referenced herein and evidence-based best practices drawn from local, national, and global research.
 - ii. The recommendations should be developed with broad input from local public safety partners, social service and mental and behavioral health partners, and community-based stakeholders, including people with lived experience.

- iii. The assessment and recommendations should begin with a “gap analysis” to identify the gaps in services and facilities for justice involved individuals who are unhoused or homeless, face substance use challenges, struggle with mental and behavioral health needs, are youth or young adult offenders, or are otherwise strong candidates for diversion programs and alternatives to incarceration.
 - iv. Analysis should identify both Rehabilitative and Restitutive program needs.
 - v. Analysis should consider best practices in other Counties that have supported low jail populations and public safety.
 - vi. Analysis should consider what programs or practices in our County that existed prior to the pandemic can be expanded to support alternatives to incarceration.
 - vii. Analysis should propose what additional services and supports are needed in the community to support people in non-custodial settings and reduce justice involvement. These supports might include community resources or law enforcement services, supportive housing, mental or behavioral health facilities, substance use facilities or programs, or other entities that we could refer/take people to instead of jail.
2. Direct the Chief Administrative Officer to contract with an Independent Consultant to analyze the costs, savings, and long-term fiscal impacts to PSG, HHSA, and other aspects of County operations by shifting our County approach to public safety to prioritize “safety through services” and evidence-based alternatives to incarceration over our current incarceration model. This analysis should be based on the reports and analysis identified above, and return to the Board in alignment with the schedule delineated in Recommendation 1(a). Fiscal impacts to be considered include but are not limited to: reduced capital investments, including anticipated jail upgrades and expansions, if our jail population can be permanently reduced; increased capital investments, including permanent supportive housing, mental and behavioral health facilities for both short and long term care, and drug and alcohol use treatment centers; increased staffing for integrative services, homelessness services, drug and alcohol use services, and mental and behavioral health services, if applicable. Analysis should identify costs or savings associated with specific capital investments or service programs, over 1-year, 5-year, 10-year time, and 20-year time periods.
 3. In accordance with Board Policy A-87, Competitive Procurement, approve and authorize the Director, Department of Purchasing and Contracting and the Deputy Chief Administrative Officer of the Public Safety Group to issue a Request for Information (RFI) responsive to the questions below. This information will inform the County leading to a Request(s) for Proposal and contract(s) award(s) to conduct research, analysis, and delivery of report(s) as outlined in Recommendations #1 and #2. Accordingly, approve and authorize the Director, Department of Purchasing and Contracting to issue a Request(s) for Proposal as described above, and upon successful negotiation and determination of fair and reasonable pricing, award a contract(s) for one year, with one option year and up to an additional six months if needed, and to amend the contract(s) as needed to reflect changes to services and funding , subject to a determination of fair and reasonable pricing, at terms acceptable to the County. Depending on proposals received and qualifications of firm(s), multiple awards may be made to complete analyses. The RFP will specify that the analysis must be conducted in close consultation with public safety partners and community-based stakeholders, including but not limited to: incarcerated and formerly incarcerated individuals; local community based re-entry, alternatives to incarceration, and recidivism experts (housing, substance use, reentry, mental and behavioral health, veteran services, domestic violence,

etc.); public safety partners; county health and human services leadership; criminal justice reform advocates; and Supervisors' individual Board offices in a Brown Act compliant manner. The criteria in the solicitation must include significant experience conducting the specific types of analyses outlined in Recommendations #1 and #2 and in the Overview, including significant experience analyzing large jail systems. See Background for examples of the types of reports we anticipate by qualified consultants.

4. Direct the Chief Administrative Officer to solicit recommendations and convene stakeholder meetings regarding the interventions that would most effectively and safely reduce the San Diego jail populations. Recommendations will be solicited from public safety partners; health and human services leadership across San Diego County; local community-based re-entry, alternatives to incarceration, and recidivism experts; criminal justice reform advocates; and Supervisors. The CAO can work with the Independent Consultant, where appropriate, to solicit information and recommendations from stakeholders. Beginning with May 24th report, CAO recommendations should build iteratively on the findings and analyses produced by the Independent Consultant and may be additive or different than the findings and recommendations of the Consultant. In collaboration with the Consultant, the CAO can convene public community forums to seek input and feedback.
 - a. The schedule for the CAO to report back to the Board will be as follows:
 - i. *February 8th, 2022*: Preliminary Report -- Analysis and recommendations that could be adopted and implemented in the FY 2022-2023 budget
 - ii. *May 24th, 2022*: Initial Interim Report and Recommendations
 - iii. *October 25th, 2022*: Draft Comprehensive Report and Recommendations
 - iv. *February 1st, 2023*: Final Comprehensive Report -- Recommendations that could be adopted and implemented in the FY 2023-2024 budget, five year plan, and subsequent budget cycles
 - b. Input and recommendations from the Public Safety and Health and Human Services Leadership will be solicited at the executive level, and should include, but not be limited to: the Public Defender, the District Attorney, the Sheriff, the Presiding Judge of San Diego County, the San Diego City Attorney, San Diego City Chief of Police, relevant organizational leadership within the County's HHSA, including BHS, and PSG Groups, and Supervisors' Board offices in a Brown Act compliant manner. The community-based re-entry, alternatives to incarceration, and recidivism input should include housing, substance use, reentry, mental health, parenting, veteran services, immigrant services and domestic violence specialists. The criminal justice reform input and recommendations will be solicited from criminal justice policy experts and engagement specialists who have a history of mobilizing and educating community members around best practices.
 - c. Analysis should focus on the disproportionately represented individuals that experience substance use, mental illness, poverty, homelessness, and are from diverse communities of color including disabled, youth or young adults, LGBTQ2IA+ Black, Latinx, Indigenous, Asian and more.

- d. Analysis should identify the gaps in services and facilities needed to dramatically scale-up alternatives to incarceration, including but not limited to: pre-trial detention; post-trial alternative sentencing; mental and behavioral health facilities, treatments, and services; substance use disorder facilities, treatments, and services; services and housing for our un-housed population.
- e. Analysis should identify concrete and specific programs, services, facilities, and other investments to fill these gaps and scale-up alternatives to incarceration.
- f. Analysis should focus on identifying public safety policy changes that would facilitate the utilization of alternatives to incarceration.
- g. Analysis should be data driven, beginning with lessons learned from COVID-19 policy changes, as discussed in Recommendation 1b.

EQUITY IMPACT STATEMENT

Due to the history of racism and oppression in the United States and current practices within the legal system, incarceration has always disproportionately impacted the poor, mentally ill, disabled, homeless, those who suffer from substance use and people of color who have been systemically oppressed. For example, Black Americans comprise about 27% of all individuals arrested in the United States-double their share of the total population. Over-policing of communities of color also contributes to the targeting of Black and Brown people. Marijuana use is roughly equal among Black people and white people, but Black people are 3.64 times more likely to be arrested for marijuana possession. “In every single state, Black people were more likely to be arrested for marijuana possession, and in some states Black people were up to six, eight, or almost 10 times more likely to be arrested.”

In addition, arrestees with mental illness typically receive inadequate mental health services while incarcerated. Homelessness is especially high among those who have been incarcerated and people recently released from prison. Analyzing San Diego County’s incarceration system will assist in creating equitable outcomes for our most underserved diverse communities of color including disabled, LGBTQ2IA+ Black, Latinx, Indigenous, Asian and more.

FISCAL IMPACT

Funds for this request are included in the Fiscal Year 2021-22 Operational Plan for the County’s Public Safety Group. If approved, this request will result in costs of up to \$300,000 in Fiscal Year 2021-22. The funding source is General Purpose Revenue. There may be fiscal impacts associated with future recommendations and any returns back to the Board. Any such recommendations would need to return and be approved by the Board. There will be no change in net General Fund cost and no additional staff years.

BUSINESS IMPACT STATEMENT

N/A

ACTION:

ON MOTION of Supervisor Lawson-Remer, seconded by Supervisor Fletcher, the Board of Supervisors took action as recommended.

AYES: Vargas, Anderson, Lawson-Remer, Fletcher, Desmond

State of California)
County of San Diego) §

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors



Signed
by Andrew Potter