

# COUNTYWIDE CRIMINAL JUSTICE COORDINATION COMMITTEE

## MINUTES OF THE **March 21, 2018** MEETING

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 140  
Los Angeles, California 90012

### **MEMBERS AND ALTERNATES PRESENT**

Chair: Sheila Kuehl, Supervisor, Third District and Chair of the County Board of Supervisors

Beatriz Dieringer, California League of Cities

\*Brian Elias for Jonathan Lucas, County Coroner – Chief Medical Examiner

\*Paul Espinosa for Charlie Beck, Chief, Los Angeles Police Department

Peter Espinoza, Director, Office of Diversion and Reentry

Janice Fukai, County Alternate Public Defender

Michael Garcia, Assistant Supervising Judge, Criminal Division, Superior Court

Scott Gordon, Supervising Judge, Criminal Division, Superior Court

\*Jason Hasty for Debra Duardo, Superintendent, County Office of Education

Christa Hohmann, Directing Attorney, Post Conviction Assistance Center

\*Kelly Jones for Eric Garcetti, Mayor, City of Los Angeles

Shawn Landres, Chair, County Quality & Productivity Commission

David Marin, Field Office Director, U.S. Immigration and Customs Enforcement

Terri McDonald, County Chief Probation Officer

William Montgomery for Scott Minnix, Director, County Internal Services Department

\*Bryan Oh for Richard Llewellyn, Interim Los Angeles City Administrative Officer

Sam Ohta, Assistant Supervising Judge, Criminal Division, Superior Court

Chris O'Quinn, Chief, Southern Division, California Highway Patrol

Robert Philibosian, Peace Officers Association of Los Angeles County

\*Ray Regalado for Cynthia Banks, Director, County Department of Workforce Development, Aging and Community Services

Ray Regalado for Robin Toma, Executive Director, County Human Relations Commission

Eddie Rivero for Jim McDonnell, Sheriff

Devallis Rutledge for Jackie Lacey, District Attorney and Vice Chair of CCJCC

Nicole Tinkham, Interim County Public Defender

\*David Turla for Sachi Hamai, County Chief Executive Officer

\*Darneika Watson-Davis for Vivian Ekchian, Interim-Superintendent, Los Angeles Unified School District

Andrea Welsing for Barbara Ferrer, Director, County Department of Public Health

Lance Winters for Xavier Becerra, California Attorney General

**\*Not a designated alternate**

**I. CALL TO ORDER / INTRODUCTIONS**

Chair Sheila Kuehl, County Supervisor, Third District

The meeting was called to order at 12:00 p.m. by Los Angeles County Supervisor Sheila Kuehl, Chair of CCJCC.

Self-introductions followed.

**II. APPROVAL OF THE MINUTES**

Chair Sheila Kuehl, County Supervisor, Third District

There were no requests for revisions to the minutes of the February 21, 2018 meeting. A motion was made to approve the minutes.

**ACTION: The motion to approve the minutes of the February 21, 2018 meeting was seconded and approved without objection.**

**III. BAIL-RELATED MATTERS**

Judge Sam Ohta, Assistant Supervising Judge, Los Angeles Superior Court  
Criminal Division

Catherine Mathers, Senior Deputy County Counsel

Brett Taylor, Center for Court Innovation

Adelle Fontanet, Center for Court Innovation

Judge Sam Ohta, Assistant Supervising Judge of the Criminal Division of the Los Angeles Superior Court, appeared before CCJCC to provide an overview of the recent California Appeals Court decision in the case of *In re Humphrey*.

Catherine Mathers, Senior Deputy County Counsel, joined in this presentation to provide an update on the efforts of the County Counsel's Bail Reform Team. In addition, Brett Taylor and Adelle Fontanet from the Center for Court Innovation joined this presentation to discuss risk assessment tool options that are being explored by this County.

Overview of *In re Humphrey*

On January 25, 2018, the California Court of Appeal, First Appellate District, issued a decision in the case of [\*In re Humphrey\*](#) (*Humphrey*). This opinion was based on a Petition for a Writ of Mandate challenging a lower court's interim decision for a bail hearing conducted under Penal Code Section 1275.

Judge Ohta noted that this Appellate Court ruling applies to all of California. As there is no other opinion on the issue from *Humphrey* right now, the decision is binding on all of the Superior Courts in the California system.

There are three notable state laws that govern the cash bail system in California. One is Penal Code Section 1269b (P.C. 1269b), which covers the structural framework for how cash bail issues are to be handled.

The next two are provisions within the California Constitution. Article I, Section 12 states that pre-trial defendants, as a matter of right, are entitled to be released on bail, with the following exceptions:

- Capital cases (no bail)
- Violent sex cases where there is clear and convincing evidence of substantial danger of harm (no bail)
- Any felony where there is clear and convincing evidence of substantial danger of bodily injury to the victim (no bail)

Article I, Section 28 (f) of the California Constitution is part of an overall expression of rights that victims possess, including a victim's right to public safety bail. This law, known as Marsy's Law, includes provisions such as the victim's right to notice of any Court proceedings that may impact their safety.

Bail may be set and adjusted at various stages. First, the initial setting of bail may occur when an arrest warrant is issued by the Court. This will usually be based on the countywide bail schedule. Also, when the accused is arrested without a warrant, the bail may be set by the countywide bail schedule.

Pursuant to P.C. 1269b, on an annual basis a bail committee of judges determines the appropriate amount of bail for certain charged criminal conduct, which is the countywide bail schedule.

After the initial setting of bail, a pre-filing adjustment may occur. An on-call bail magistrate may deviate up or down from the bail schedule, depending on what information is brought forward. However, the magistrate may not deviate downward on P.C. 1270.1 offenses, which are serious and violent felonies.

Next, bail may be set during in-Court proceedings. Bail hearings involve a question of whether to set a bail amount (and how much), set no bail, or release the defendant on his or her own recognizance (O.R. release).

One type of bail hearing is pursuant to California Constitution Article I, Section 12. This is a rare request made by the prosecution to determine whether the defendant is a danger to the community. In this case, the prosecutor asks the Court to hold the defendant without bail.

The usual type of bail hearing is pursuant to P.C. 1275, which is conducted routinely. In this bail hearing, the Trial Court considers the following four factors in determining whether to increase bail, reduce bail, or order an O.R. release:

- Protection of society (public safety)
- Seriousness of the offense
- Defendant's criminal history
- Flight risk

*Humphrey* addressed how these P.C. 1275 bail hearings are conducted.

Since the case was decided, the Los Angeles Superior Court has heard 470 bail hearings countywide.

Judge Ohta emphasized that *Humphrey* did not find that California's laws governing bail are facially unconstitutional under the U.S. Constitution's Due Process Clause. Further, all of the bail laws referenced earlier remain in effect.

What *Humphrey* did do is articulate a refined standard on the Court's decision-making process when confronted with a usual (P.C. 1275) bail hearing.

There are four major issues regarding usual bail hearings that are addressed in the *Humphrey* decision.

The first is that it sets the standard of proof as clear and convincing evidence, which is a stricter standard than preponderance of the evidence. Judge Ohta explained that if a standard is not articulated, it is generally held to be by a preponderance of the evidence. However, this case set a clear and convincing standard with respect to the consideration of public safety and flight risk when considering bail.

The second issue concerns public safety. The Court must determine whether there are any non-economic, less restrictive alternatives to bail that would adequately address the protection of society. For example, this may include such options as ankle bracelets, home arrest, or a combination of approaches to protect the victim or anyone else involved in the case.

If the Court finds by clear and convincing evidence that there aren't any non-economic, less restrictive alternatives to ensure public safety, then it may conclude that cash bail is necessary.

The third issue addressed by the case is that of flight risk. In setting bail, the Court must take into account the individualized circumstances of the defendant, including the ability to pay bail set by the Court.

The Court may maintain a level of bail even if the defendant cannot pay only if it finds by clear and convincing evidence that no lesser restrictive condition or combination of conditions will adequately secure the defendant's future Court appearances.

The fourth issue addressed by the Appellate Court is that the Trial Court must make an adequate record of its discretionary decision sufficient for review by an Appellate Court.

Judge Ohta stated that bail motions under P.C. 1275 may be raised at any of the following times:

- Arraignment on Complaint (Penal Code Section 1269);
- Automatic 5-Day Review (Penal Code Section 1270.2);
- After the Preliminary Hearing (Penal Code section 875); and
- Arraignment on Information/Indictment

At each of these proceedings, the defendant is entitled to a de novo (fresh) bail review. A defendant may also request a bail hearing based on a change of circumstances that may affect the question of bail.

Judge Ohta summarized his presentation by reiterating that *Humphrey* left California's cash bail structure intact. However, it did refine the standard for what Trial Courts must consider when addressing a usual bail motion under P.C. 1275.

#### Update on the County Counsel's Bail Reform Team

Catherine Mathers, Senior Deputy County Counsel, provided CCJCC with an update on the efforts of the County Counsel's Bail Reform Team.

As background, the Board of Supervisors passed a motion on March 8, 2017, that instructed the County Counsel's Office to review, research, and analyze the County's current policies and practices for incarceration, bail, screening, and supervision of criminal defendants and the existing pretrial release system.

(See Board motion at: <http://file.lacounty.gov/SDSInter/bos/supdocs/112060.pdf>, and Amendment at: <http://file.lacounty.gov/SDSInter/bos/supdocs/112298.pdf>.)

County Counsel created a Bail Reform Team to carry out the motion. The tasks include the following:

- Reviewing and determining the best practices for establishing, implementing, and running a robust Pretrial Services Division;
- Reporting back to the Board on potential alternatives to the use of bail bondsmen;
- Exploring whether Los Angeles County could reorient its approach to bail; and
- Reporting back to the Board with recommendations for best practices to improve and create a more equitable and just pretrial release system that ensures efficiency and fairness.

The Bail Reform Team has been studying the legal framework for how bail works in California. They have also been meeting with members of CCJCC to determine how the County bail process works.

The first time at which a bail reduction can be considered is at the time of arrest. Under certain conditions, such as a misdemeanor without holds or warrants, the officer can release the individual with a citation and a promise to appear.

For an individual that is arrested and taken into custody, the first chance at bail is with the Probation Department. Probation has several programs in which an individual can ask for a review of their bail.

Probation personnel are located in major booking facilities to engage the individuals that qualify for a bail reduction. If it is determined that the individual does qualify, the matter is brought to the bail magistrate, referenced in Judge Ohta's presentation, to decide if a bail reduction or an O.R. release is to be ordered.

Ms. Mathers stated that the Bail Reform Team is studying this to learn whether this process can be enhanced.

Additional Probation personnel are available at the Arraignment stage to assist with individuals who are still in custody and may be eligible for reduced bail, an O.R. release, or a supervised release.

The Bail Reform Team has also been researching how bail is handled in other jurisdictions, including New York City, Maryland, and Santa Clara County.

The goal of the Team is to find or develop an evidence-based objective tool that will provide information to judicial officers when they are making bail determinations at any of the stages that were reviewed by Judge Ohta.

Another key component of the work being done is the development and enhancement of services that are available for individuals on pretrial supervision.

Ms. Mathers noted any risk assessment tool that is adopted or developed for this County must meet the needs of the Court and also balance the need for public safety with the rights of those arrested. To assist with this effort, the Bail Reform Team is working with consultants from the Center for Court Innovation (CCI)<sup>1</sup>. She introduced Brett Taylor and Adelle Fontanet from CCI to provide information about their role in this process.

Mr. Taylor thanked the committee for inviting him and Ms. Fontanet to present at this meeting. As background, he explained that their organization is a non-profit think tank based in New York City that focuses on criminal justice reform. He emphasized that their role is not to tell the County what to do, but instead to share information from research and help to guide local officials in making decisions that meet local needs.

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<sup>1</sup> The website for the Center for Court Innovation can be found at: <https://www.courtinnovation.org/>

CCI is assisting the Bail Reform Team by providing information on existing research and risk assessment tools. The Team may ultimately choose to adopt a tool that is already in use, develop its own, or combine existing tools with a developed one.

Jurisdictions differ in terms of what they want their risk assessment tool to do. For example, some may be seeking to predict the risk of someone fleeing, others may be concerned mostly with the risk of reoffending, while others may want the tool to be structured so that it will help to reduce their jail population. Assessment tools may also be used to determine the needs of individuals.

Another factor that must be considered is whether to have a static risk assessment tool or one that uses interviews. A static tool is easier to administer and is based on static factors, such as a person's criminal history, or lack thereof. Interviews may result in more information, but they also require more time and someone available to be asking the questions.

Mr. Taylor noted that risk assessment tools can also serve to inform the Court in deciding on the level and type of supervision that may be imposed on the person that is going to be released. Many options are available ranging from the more intrusive to the less intrusive.

Ms. Fontanet discussed the supervised release program that CCI helped to implement in New York City. A pretrial risk assessment tool was created and validated specifically for this program. Due to the high volume of caseloads, a static tool was utilized.

Also in the New York City program, a second layer of inquiry is available at Arraignment for individuals who are identified as possibly eligible for the program. The person's public defender is consulted and, if it is found to be appropriate, the defendant is interviewed. An effort is made to obtain contact information for the individual. The judicial officer then will make a decision based on the person's risk level.

The supervised release program has been in operation for about two years and over 6,000 individuals have participated. Of this number, 4,000 have participated in the past year, which is reflective of the growth and expansion of the program.

In the most recent evaluation, it was found that individuals who have participated in the supervised release program have roughly the same rate of appearance in Court as individuals who had been released on bail.

Mr. Taylor suggested that a validation study should be used for any risk assessment tool that is used in Los Angeles County. This will provide a quality control mechanism and alert officials to any changes that are needed.

## Questions and Comments

Supervisor Kuehl reported that Chief Justice Cantil-Sakauye of the California Supreme Court has stated that bail reform is an important matter to be addressed by the criminal justice system in this state. California Attorney General Xavier Becerra has similarly indicated that his office is serious about bail reform.

The presentations at this meeting all concern this topic, which is being given thoughtful attention. Many of the member organizations of this committee are also deeply engaged in this.

The Board of Supervisors has an interest in bail reform for a wide variety of reasons, and it ties in with other issues of concern such as homelessness, mental health problems, and jail overcrowding, among others.

Judge Scott Gordon, Supervising Judge of the Criminal Division of the Los Angeles Superior Court, stated that he was a member of the Chief Justice's pretrial detention reform group and can answer questions that committee members may have about it.

In response to a query from Los Angeles County Alternate Public Defender Janice Fukai, Judge Ohta confirmed that the 470 bail hearings since the *In re Humphrey* decision is a countywide number. Judge Gordon added that, for these purposes, a bail hearing is considered to be any request made for review under *In re Humphrey*. The Court does not currently have data available on the outcomes these hearings.

In response to a query from Ms. Fukai about the number of times that bail is reduced following a request for a bail reduction, Reaver Bingham of the Probation Department stated that the rate before *Humphrey* was 25 to 28%, but the data since the decision in that case is not yet available.

Ms. Fukai inquired as to whether any difference has been found in the outcomes of using static risk assessment tools versus interviews. Ms. Fontanet stated that recent studies have shown that static tools may be more predictive on the whole than interviews. One possible reason is that the interviewers need to be trained and able to both ask and accurately assess the information that's been given. Further, some individuals may be reluctant to share information in interviews.

A discussion was had concerning the best means for obtaining information about an individual's needs. Ms. Fontanet stated that that New York City program uses an intake officer to ask those types of questions after a risk score is assessed.

Judge Gordon stated that judicial officers will always want as much information as possible. However, they also recognize that there is a limit on what is a reasonable expectation on the amount of information that can be obtained, particularly as the focus on bail reform is shifting towards an earlier time in the process, sometimes even before the case has been filed.



Ms. Mathers reported that Santa Clara County has an interview-based system. To address defense concerns, it limits the type of information that might compromise the defendant.

Robert Philibosian of the Peace Officers Association of Los Angeles County inquired as to whether a study has been done on the local and statewide fiscal impact of risk assessment tools.

Ms. Mathers stated that the Bail Reform Team has not addressed the fiscal impact, but noted that the State Legislature may impose bail reform regardless of the steps that are taken locally.

Mr. Philibosian expressed concern that this could become an unfunded mandate from the state.

Supervisor Kuehl stated that a cost-benefit analysis could potentially show savings locally. She also noted that action taken at the state level on bail reform would significantly involve the Courts. Given that the Courts are an independent third branch of government, she stated that she would expect that there would be more collaboration rather than an imposition.

She added that this county is choosing to explore the risk assessment tools on its own with or without any state mandate, and maybe even beyond Senate Bill 10 (SB 10).

Shawn Landres, Chair of the County Quality & Productivity Commission, inquired as to whether risk assessment tools are predictive of other kinds of outcomes beyond the Court setting, such as the likelihood of successful diversion and reentry, rehabilitation, and reintegration into the community.

Mr. Taylor stated the New York City program indicates that people on supervised release are having their cases resolved without having to go to jail and, in many cases, without a criminal conviction. This has ripple effects in terms of the ability to get loans, housing, licensing, and other opportunities that may have a positive impact on the community.

Mr. Taylor added that studies indicate that being in jail two or three days increases the likelihood of someone having another arrest by 30% to 40%. This could also have a positive impact over the long run.

Jenny Brown of the Los Angeles County Public Defender's Office inquired as to whether any jurisdiction is seeking a needs assessment tool.

Mr. Taylor stated that many jurisdictions are exploring this. However, he noted that this raises difficult questions in a pretrial setting given that the person has not been found guilty. In the New York City program, this is resolved in that needs are identified and individuals are informed about services, but services are not mandated at the pretrial

stage.

Supervisor Kuehl thanked all of the presenters at this meeting.

**ACTION: For information only.**

**IV. OTHER MATTERS / PUBLIC COMMENT**

There were no public comments.

The Los Angeles County Bar Association will be holding its 2018 Criminal Justice Awards Dinner on Thursday, May 17, 2018, at the L.A. Hotel Downtown, 333 S. Figueroa Street, Los Angeles 90071. Registration will open soon.

Honorees this year include:

Honorable Anne Egerton - Judge of the Year

Danette Gomez - Prosecutor of the Year

Irene Nunez - Defense Attorney of the Year

Sherry Gold - Career Achievement

Margaret Carter, Brandon Fox, Eddie Jarregui, and Lizabeth Rhodes - Special Recognition Award

**V. ADJOURNMENT**

The meeting was adjourned at 12:57 p.m.