



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Manager's Office



Date: August 31, 2016
Board Meeting Date: October 4, 2016
Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: John L. Maltbie, County Manager

Subject: Board of Supervisors' Response to the 2015-2016 Civil Grand Jury Report, "Innocent Until Proven Guilty? Bail Practices in San Mateo County"

RECOMMENDATION:

Approve the Board of Supervisors' response to the 2015-2016 Grand Jury Report, "Innocent Until Proven Guilty? Bail Practices in San Mateo County."

BACKGROUND:

On July 11, 2016, the 2015-2016 San Mateo County Civil Grand Jury issued a report titled "Innocent Until Proven Guilty? Bail Practices in San Mateo County." Pursuant to the California Penal Code, the Board of Supervisors is required to submit comments on the findings and recommendations pertaining to the matters over which it has some decision making authority within 90 days of the issuance of the report. Therefore, the Board's response to the report is due to the Presiding Judge of the Civil Grand Jury, the Honorable Joseph C. Scott, no later than October 11, 2016.

DISCUSSION:

The Grand Jury made six findings and two recommendations in its report. Each finding and recommendation, along with County staff's recommended response, is set forth below:

FINDINGS

Finding 1:

In FY 2014-2015, San Mateo County spent \$64.6 million, or about \$75,000 per inmate, to run the Men's and Women's Jails. About 67% of inmates were unsentenced, and 53% of these unsentenced inmates were eligible for bail but remained in jail because they could not afford bail. The incarceration of unsentenced inmates was a considerable cost to County taxpayers.

Response:

Partially Disagree. The County does not collect data on why inmates do not post bail. If convicted, the pretrial time in custody is credited towards inmates' sentences.

Finding 2:

Jail is highly disruptive to inmates and their families.

Response:

Agree; as is crime to victims and their families.

Finding 3:

Incarcerating people solely because they cannot afford bail is inconsistent with the fundamental principle of "innocent until proven guilty."

Response:

Partially disagree. Pursuant to state law that is controlled by federal and state constitutional principles, bail is determined by the trial Court on a graduated basis; generally, the more serious the crime, the higher the bail, unless the crime is so severe and the risks to public safety and/or flight are so great that bail is not granted.

The County notes that the incarceration of individuals charged with a crime is directly related to public safety. Bail is set by the Superior Court (an agency separate and apart from the County) based on the seriousness of the crime and is used as a method to ensure an individual's appearance in court. State law already mandates those charged with misdemeanor crimes be released on their promise to appear, without being required to post bail, subject to certain exceptions. The passage of Proposition 47 changed a number of non-violent crimes previously classified as felonies to misdemeanors (Proposition 47 offenses include crimes such as possession of heroin). Individuals arrested on Proposition 47 offenses are therefore now eligible for pre-trial release without being required to post bail.

Eighty-six percent of the individuals currently incarcerated in San Mateo County are in custody for felony offenses.

Finding 4:

Pretrial tools such as evidence-based risk-assessment tools and electronic monitoring have been deployed by counties in California and have the potential to reduce jail populations, mitigate community risk, improve court appearance, and save taxpayers money.

Response:

Agree.

Finding 5:

According to interviews with senior Probation Department staff, the department's Pretrial Services recommendations are typically followed only 30% of the time.

Response:

Agree.

Finding 6:

The County's budgeting and reporting systems make it difficult to estimate what changes in inmate population will cost.

Response:

Wholly disagree. These calculations have little bearing on the County's budgeting and reporting systems. The County is fully aware of how much it costs to operate the two main jails, the juvenile hall, and the Boys Camp. If one were to provide an exact figure on how much the population of any of those facilities were to decrease, the County could provide a reasonably good estimate of what the cost savings would be. The issue is more about determining how much the inmate populations would actually decrease with the expanded use of risk assessment tools, electronic monitoring (EM), release on own recognizance (OR), and other pre-trial release programs. For adult inmates in particular, the Court has historically granted EM and OR far less than what the Sheriff's risk assessment data would indicate.

Similarly, while the jail population does have an impact on the costs of operating a correctional facility, there are other factors that must be considered. The greatest costs associated with the operation of the correctional facility are personnel costs. There are State standards and safety standards that must still be met that require staffing levels to be maintained.

The annual cost of incarceration per inmate is \$75,000 and includes all operational costs of the facility, including housing, medical/mental health treatment, and programming. Therefore the release of an inmate does not translate to a savings of \$75,000 annually.

RECOMMENDATIONS

Recommendation 1:

The San Mateo County Board of Supervisors should direct the Probation Department Pretrial Services to evaluate and recommend various alternatives to pretrial incarceration, including but not limited to evidence-based risk-assessment tools and electronic monitoring.

- The Probation Department should present its evaluation and recommendations to the Board of Supervisors by June 30, 2017.

- As part of the evaluation and recommendation process, the Probation Department should receive input from members of the San Mateo County Community Corrections Partnership (CCP), as well as from criminal trial judges.

Response:

The recommendation has not been implemented, but will be implemented in the future. The Probation Department is currently working with the Arnold Foundation to implement a Public Safety Assessment (PSA) pretrial tool. This foundation is currently collaborating with approximately 20 jurisdictions across the country, including the Santa Cruz County Probation Department, to implement the PSA. Although there are a number of pretrial risk assessment tools available, the Probation Department feels that since the PSA is being utilized in a Bay Area county, with a similar population as San Mateo County, it will be the best suited tool to be implemented for San Mateo County. Unfortunately, there is no definite timeline for when the Probation Department will be included in the Arnold Foundation PSA implementation. The Probation Department is currently in the pre-selection stage on the Arnold Foundation's waitlist. Should the timetable for implementation hasten, the Probation Department is prepared to shift direction towards a different tool. Probation staff will continue to monitor and update the Board if there are any updates.

The Probation Department will also explore options of implementing electronic monitoring for the pretrial population. However, further analysis should be done on the type of electronic monitoring to be implemented. There are various types and degree of electronic monitoring equipment and supervision and a deeper look into what equipment and use is a better fit for the pretrial population is necessary.

It is important to note that in order to fully implement a risk assessment tool as well as electronic monitoring for the Probation Department's Pretrial Services Unit, there has to be discussions about rebuilding the unit to meet these new programs. The Probation Department will need to evaluate the funding and fiscal support needed to make these recommendations possible.

While the Community Corrections Partnership primarily addresses issues related to the supervision of felony probationers, we intend to consult with our partners, particularly the Courts and Sheriff's Office, along with other departments and community partners during the evaluation and recommendation process. The Probation Department can present its progress and any evaluation findings regarding the above mentioned matters to the Board of Supervisors by June 30, 2017.

Acceptance of the report contributes to the Shared Vision 2025 outcome of a Collaborative Community by ensuring that all Grand Jury findings and recommendations are thoroughly reviewed by the appropriate County departments and that, when appropriate, process improvements are made to improve the quality and efficiency of services provided to the public and other agencies.

FISCAL IMPACT:

There is no Net County Cost associated with accepting this report.