



April 5, 2020

Judicial Council of California
455 Golden Gate Ave
San Francisco, CA 94102

**Re: Comments on Report to the Judicial Council
Item No. 20-141**

Sent by email attachment to: judicialcouncil@jud.ca.gov

Dear Honorable Members of the Judicial Council:

The ACLU of California submits the following comments on the Report to the Judicial Council for the Judicial Council’s meeting on April 6, 2020 (the April 4 Report), and the recommendations therein.

While we have had limited ability to review, we offer the following observations.

First, we commend the Council for taking steps to address the COVID-19 crisis facing jails across this state. Given that there is no cure for COVID-19 and the only method to stop transmission is preventative measures that are impossible to implement in crowded jails, ensuring that people are able to safely return to their communities, and do not die in jail, is paramount.

Misdemeanor DUI Arrestees Should be Released on \$0 Bail During This Pandemic

The Chief Justice’s March 20, 2020 advisory recommended that in criminal cases, courts

“Revise, on an emergency basis, the countywide bail schedule to lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to \$0 for many lower level offenses – *for all misdemeanors except for those listed in Penal Code section 1270.1 and for lower-level felonies*. This will result in fewer individuals in county jails thus alleviating some of the pressures for arraignments within 48 hours and preliminary hearings within 10 days.”

<https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures>, emphasis added. However, proposed emergency rule 4 in the April 4, 2020 Report does not go as far the Court’s March 20, 2020 advisory, which endorsed the pre-trial release of most in-custody misdemeanor arrestees except for those enumerated in Pen. Code §1270.1 – a limited category of crimes involving violence or threatened violence. Misdemeanor DUI arrests are not enumerated in Penal Code §1270.1 and should not be excluded from the \$0 Emergency Bail Schedule provisions in proposed emergency rule 4. In 2018, the last year for which comprehensive data is available, misdemeanor DUI arrests constituted the second largest single category of adult misdemeanor arrests. See <https://openjustice.doj.ca.gov/data-stories/2018/arrests-reported-2009-2018>. In view of the risks of contracting COVID-19 in a custodial setting, and the newly extended period of time to get to court for a first appearance

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under the Chief Justice’s March 30, 2020 Order, people arrested for misdemeanor DUIs should be released pre-arraignment on \$0 bail.

People Arrested for Felony Probation, Parole, Post Release Community Supervision, or Mandatory Supervision Should be Released on \$0 Bail Where the Violation is Not a New Felony Offense

While the April 4, 2020 report does recommend that bail be set at \$0 for violations of misdemeanor probation, whether the arrest is made with or without a bench warrant, we would urge you to extend the same rules to violations of felony probation, parole, post release community supervision, and mandatory supervision where the violation is not a new felony offense. At a time where individuals and families are experiencing extreme economic, medical health, mental health, housing, and social crises, and individuals under felony supervision may be finding it more difficult to meet supervision requirements, we believe the State should be making every effort to relieve these burdens, not further punish and exacerbate them.

Those Not Eligible for \$0 Bail Under the Emergency Bail Schedule Should Be Released on the Least Restrictive Conditions Necessary

For those individuals whose arrest offenses do not qualify for \$0 bail under the Emergency Bail Schedule, courts should nonetheless exercise their discretion to release them pretrial. Whenever possible, courts should release people on their own recognizance with the least restrictive non-financial conditions of release necessary to reasonably ensure their appearance and public safety. Where money bail is used, it should be set at the least restrictive level necessary to ensure the appearance of the person in an amount that the person has the present ability to pay without substantial hardship. Under no circumstances should an individual be detained because of their inability to afford or pay the amount of money bail set.

Include Provisions for the Court to Release Those with Fewer than 60 Actual Days on Sentence or Those Who Are Medically Vulnerable

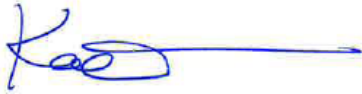
The Chief Justice’s March 20, 2020 advisory recommended that in criminal cases, courts “[i]dentify detainees with less than 60 days in custody to permit early release, with or without supervision or community-based treatment.” <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures>. However, the recommendations in the April 4, 2020 report do not provide early release for in-custody persons with less than 60 actual days remaining on their sentence or who are medically vulnerable. Guidelines for defining “medically vulnerable” are available from the Centers for Disease Control at https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fhigh-risk-complications.html.

The April 4, 2020 order of three-judge court in *Coleman v. Newsom* and *Plata v. Newsom* recently noted that the Constitution “requires [the State] to take reasonable measures to abate [the risk of COVID-19 spreading within California’s prisons].” <https://www.courtlistener.com/recap/gov.uscourts.cand.76/gov.uscourts.cand.76.3261.0.pdf>, at

*9. We therefore ask that you authorize superior courts to re-sentence and release inmates who have 60 actual days remaining on their disposition or sentence, are older than 60, have diminished health capacities, or are pregnant, unless release poses a significant physical safety risk to a specific individual.

Please do not hesitate to contact us should you have any questions or concerns.

Sincerely,



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