

Implementing Safe and Effective Pretrial Services

Steps L.A. County Can Take to Decrease the Pretrial Population

For Los Angeles County to achieve its goal of providing “care first, jails last” and to finally fulfill its commitment to close Men's Central Jail, the county needs to reduce the number of people held in pretrial detention.¹ The L.A. Board of Supervisors took an important step towards doing so by voting to establish a Justice, Care, and Opportunities Department (JCOD) to house and centralize pretrial services. With this vote, the board acknowledged what countless studies have already demonstrated: **supportive pretrial services not only lead to decarceration, but also promote safe and thriving communities.**²

L.A. now has a rare opportunity to create successful pretrial services and to lead the nation in establishing one-of-a-kind pretrial programming. The county has already advanced its “care first” vision through the creation of pretrial pilot programs and the formation of JCOD.³ However, 2022 saw the jail population hover consistently above rated capacity levels at close to 15,000 people.⁴ Under a system of unaffordable money bail, obtrusive supervision, and an explosion in the use of pretrial electronic monitoring (EM), the countywide pretrial population in jail increased steadily throughout last year and the county is currently detaining more people pretrial than it did in January 2022.⁵ Problems like the abhorrent conditions at the Inmate Reception Center—which prompted a federal judge to order the county to produce a decarceration plan—cannot be addressed without humane and pragmatic pretrial services.⁶

As the county sets up its independent pretrial services agency within JCOD, it can lay a new “care first” foundation. This will allow the county to achieve the transformative vision of community safety the Board of Supervisors supported when it adopted key pretrial recommendations made by the Alternatives to Incarceration (ATI) Work Group.⁷ To meet its commitments, the county should take the following next steps:

Commit to a model of support rather than supervision as the guiding principle for L.A.'s new pretrial services entity.

The “care first” approach calls for pretrial support rather than supervision. This is why the ATI Work Group recommended the pretrial services entity be situated outside of law enforcement, even as the county’s current pretrial pilot, the Pretrial Release Evaluation Program (PREP 2.0), continues to move forward as a probation-led initiative.⁸

We know from examples around the country that models of support have positive safety and return-to-court outcomes.⁹ Supportive pretrial services address underlying circumstances—such as needs for housing, treatment, and employment—to help break cycles of repeated incarceration that are driven by systemic needs beyond the person’s immediate case. These services are essential for safe decarceration. In contrast, excessive supervision can destabilize a person’s life and increase their likelihood of reincarceration on a technical violation.¹⁰ And as numerous judges have argued, addressing the interlinked crises of jail overcrowding and mental health needs requires connecting people to care as early as possible, rather than leaving them to languish in jail.¹¹

Shift away from reliance on pretrial electronic monitoring.

The use of pretrial EM has exploded in L.A. County.¹² However, pretrial EM is not “care first” and has not reduced the county’s pretrial population.¹³ A study of pretrial EM in Santa Clara County found that people who were electronically monitored were three times more likely to be reincarcerated for a technical violation than those who were not monitored.¹⁴ Further, pretrial EM not only affects people’s rights to freedom and movement, but also their ability to seek employment or other services. According to operational guidelines, participants enrolled in L.A.’s Supervised Release Program are restricted to job-searching for only three to four hours per day, two to three days per week.¹⁵

Although the use of pretrial EM has skyrocketed in recent years, public safety and rearrest rates remain constant or have increased, underscoring the ineffectiveness of surveillance as a pretrial release requirement.¹⁶ Programs that center support—such as The Bail Project and the Office of Diversion and Reentry (ODR) Housing—have better public safety outcomes than the county’s probation-led PREP program, which centers pretrial EM in its programming.¹⁷

Publish a clear one-to-three-year plan for pretrial pilot program consolidation and scaling.

One goal of JCOD and the creation of its pretrial agency is to consolidate county efforts and minimize confusion in the courts.¹⁸ There remain multiple pretrial pilot programs that need to be reconciled—specifically ones that focus on care, like the Rapid Diversion Program—so that there is one main entity judges recognize and can hold accountable. Creating one consolidated, “care first” pretrial services entity that does not include probation-led supervision will benefit clients; if a person needs mental health services or suffers from houselessness, they will be provided the requisite services to be set up for a successful release, regardless of courthouse or judge. A consolidated system will provide a full spectrum of supports, from “light touch” services, such as text reminders, all the way through to referrals to higher-need programs like ODR Housing.¹⁹

Given the existing slate of disparate pilots, to get stakeholder buy-in there needs to be a clear plan for what the newly consolidated entity will achieve and how the agency will scale the programs countywide. This plan should include a robust outline for building out the new pretrial services agency in a “care first” manner, a detailed set of goals and benchmarks for the number of participants and outcomes, recommendations for data collection and transparency, and a strategy for including community members and stakeholders.

Create an implementation group to educate system actors, build program credibility, and troubleshoot problems.

From the outset of creating L.A.’s new pretrial agency, the county should establish a standing meeting with an implementation group comprising local stakeholders (i.e., judges, prosecutors, defense counsel, medical personnel, social workers, community-based organizations, and the public). The group should have sufficient diversity of expertise to accomplish service implementation, program consolidation, and scaling. It must also include justice-involved and formerly incarcerated people, elevating the voices of those most impacted by L.A.’s system of incarceration, as per the ATI Work Group’s recommendations.²⁰

Collect data, evaluate program outcomes, and publish results immediately to build support and engagement.

To create buy-in from system actors, JCOD's pretrial services agency must engage in open communication, provide transparency into program outcomes, and establish a feedback loop from project inception. This buy-in will in turn lead system actors to impose less onerous release conditions, increase referrals to the program, and have greater confidence in released data. In the immediate term, the county's pretrial programs should collect and share information such as the number of people entering the program, the average length of time in the program, and the average case length. Once JCOD's new pretrial services agency is fully built out, the county can then begin to report more comprehensive outcomes. This will ensure that inevitable challenges cannot derail the program. As demonstrated by several successful pretrial services initiatives, the way to be resilient in the face of setbacks is to report on process, publish outcome measures, and include all stakeholders in continuous evaluation.²¹

By following these commitments, Los Angeles can make transformative change.

Although L.A. is a unique jurisdiction, cities with comparable populations and jail figures—like New York—have used supportive pretrial services as part of successful efforts to drastically decrease their jail populations.²² California jurisdictions such as Sacramento and San Francisco have also used supportive pretrial methods to improve public safety. These programs obtain such positive outcomes by releasing people held pretrial as quickly as possible, using the least restrictive means possible in release conditions, and connecting participants to necessary and supportive services early in the pretrial process.²³

In line with the success of these jurisdictions, L.A. can lead the nation forward by creating effective new pathways out of jail that center care and decrease the use of pretrial incarceration. Instead of expanding its current PREP 2.0 program as planned, L.A. County needs to focus on creating and expanding supportive services with haste. Building an independent pretrial services entity outside of law enforcement is the first important step, but L.A. must now move to action in making the commitments outlined here. L.A. County is on the ground floor of achieving its “care first” vision, and with community involvement and supportive services established correctly, Los Angeles can become a national example of cultivating pretrial services to accomplish safe, countywide decarceration.

About

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The Vera Institute of Justice is powered by hundreds of advocates, researchers, and policy experts working to transform the criminal legal and immigration systems until they're fair for all. Founded in 1961 to advocate for alternatives to money bail in New York City, Vera is now a national organization that partners with impacted communities and government leaders for change. We develop just, antiracist solutions so that money doesn't determine freedom; fewer people are in jails, prisons, and immigration detention; and everyone is treated with dignity. Vera's headquarters is in Brooklyn, New York, with offices in Washington, DC, New Orleans, and Los Angeles. For more information, visit vera.org.

Notes

¹ Los Angeles County Men's Central Jail Closure Workgroup Final Report, *Men's Central Jail Closure Plan: Achieving a Care First Vision* (Los Angeles: Los Angeles Department of Health Services, 2021) perma.cc/439V-JRUV.

² In jurisdictions such as Los Angeles, where pretrial services are administered through probation and thus approached with a law enforcement tenor, failure to appear (FTA) rates tend to be higher, or at the least remain consistent with supportive pretrial services models. See Aiden Cotter and Madeline Bailey, *Successful Pretrial Systems Rely on Supportive Pretrial Services* (New York: Vera Institute, 2022), perma.cc/8EAA-X86Q; see also Ricardo Basurto-Davila, Irene Vidyanti, and Chun Liu, *Data Collection to Support Pretrial Reform: First Quarterly Update April 2018 – March 2021* (Los Angeles: Los Angeles County Office of the Chief Information Officer and Los Angeles County Chief Executive Office, 2022), 22, perma.cc/2KQ2-YC3E.

³ Robert Ross, Kelly Lytle Hernández, Dolores Canales, et al., *Care First, Jails Last: Health and Racial Justice Strategies for Safer Communities* (Los Angeles: Alternatives to Incarceration Work Group, 2020), perma.cc/KD9K-6NTD; Hilda Solis and Sheila Kuehl, *Jails Last: Creation of the Jail Closure Implementation Team* (Los Angeles: Los Angeles County Board of Supervisors, 2021), perma.cc/X99M-7ZXF; and Sheila Kuehl, *Care First, Jails Last: Establishing a Justice, Care, and Opportunities Department to Promote Collaboration and Transparency in a Person-Centered Justice System* (Los Angeles: Los Angeles County Board of Supervisors, 2022), perma.cc/7S74-2CW4.

⁴ Los Angeles County Office of Inspector General, *Reform and Oversight Efforts: Los Angeles County Sheriff's Department, July to September 2022* (Los Angeles: Office of Inspector General, 2022), 16, perma.cc/SU78-W5ZX.

⁵ Alicia Virani, *Pretrial Electronic Monitoring in Los Angeles County: 2015 through 2021* (Los Angeles: UCLA, 2022), perma.cc/WFX6-2P6B. See also Vera Institute of Justice, *Care First L.A.: Tracking Jail Decarceration*, vera.org/care-first-la-tracking-jail-decarceration.

⁶ Inspector General, *Reform and Oversight Efforts*, 2022, 18-19; and *Rutherford v. Villanueva*, No. 75-cv-04111-DDP (C.D. Cal. 2022).

⁷ Ross et al., *Care First, Jails*, 2022; and Los Angeles County Chief Executive Office, *Recommendation to Amend Justice Reform Board Directed Priority to Reflect the County's Commitment to Implementing Alternative to Incarceration Strategies* (Los Angeles: Chief Executive Office, 2020), perma.cc/2LXR-WQEG.

⁸ *Ibid.* This recommendation was crafted after several justice-involved ATI Work Group members discussed their hesitation to seek support or services from probation officers following past law enforcement encounters, including specifically people who identify as cisgender, lesbian, gay, bisexual, queer, transgender, gender-non-conforming, and/or intersex.

⁹ Cotter and Bailey, *Successful Pretrial Systems Rely on Supportive Pretrial Services*, 2022.

¹⁰ In 2020, of the people terminated from L.A.'s Electronic Monitoring Program (thus resulting in reincarceration or rearrest), 94 percent were terminated for non-compliance, as compared to five percent terminated for a new arrest and one only percent terminated for failing to appear. Virani, *Pretrial Electronic Monitoring*, 2022, 11.

¹¹ Kevin Rector, "'You Can't Get Out': Mentally Ill Languish in California Jails Without Trial or Treatment," *Los Angeles Times*, September 14, 2022, latimes.com/california/story/2022-09-14/you-cant-get-out-mentally-ill-languish-in-california-jails-without-trials-or-proper-care. See also Inspector General, *Reform and Oversight Efforts*, 2022; and Terry Lee Smerling, "Op-Ed: The mentally ill defendants in my courtroom need treatment, not jail," *Los Angeles Times*, May 20, 2022, latimes.com/opinion/story/2022-05-20/mentally-illness-treatment-defendants-los-angeles-county-courts.

¹² Virani, *Pretrial Electronic Monitoring*, 2022, 8.

¹³ See Vera Institute of Justice, *Care First L.A.: Tracking Jail Decarceration*.

¹⁴ Karla Dhungana Sainju, Stephanie Fahy, Katherine Baggaley et al., "Electronic Monitoring for Pretrial Release: Assessing the Impact," *Federal Probation* 82, no. 3 (2018), 7, perma.cc/B22G-59A3.

¹⁵ Virani, *Pretrial Electronic Monitoring*, 2022, 6.

¹⁶ Although FTA rates in Los Angeles declined slightly from 47 percent to 45 percent from 2018 to 2021, the FTA rate for felony cases more than doubled, increasing from 18 percent to 38 percent during the same three-year period. See Basurto-Davila et al., *First Quarterly Update*, 2022, 2-3.

¹⁷ For instance, in 2021, L.A. County's PREP program maintained a 52 percent FTA rate and a 37 percent post-arraignment rearrest rate (its pre-arraignment rearrest rate measured at a much lower 29 percent), whereas supportive services provided by the non-profit The Bail Project elicited an FTA rate of 32 percent and a rearrest rate of 34 percent, and people enrolled in the ODR's Housing program experienced FTA and rearrest rates of only 17 percent and 20 percent, respectively. See Basurto-Davila et al., *First Quarterly Update*, 2022, 19-24.

¹⁸ Kuehl, *Care First, Jails Last: Establishing a Justice, Care, and Opportunities Department*, 2022.

¹⁹ Programs such as New York City's Supervised Release program provide intake and needs assessments, voluntary service referrals, and phone or text reminders prior to court dates. The difference these small investments can make is tangible. Between March 2016 and December 2020, NYC's Supervised Release program boasted cumulative return-to-court rates of 86 to 92 percent in each borough. See New York City Mayor's Office of Criminal Justice, *Supervised Release Annual Scorecard 2020* (New York: NYC Criminal Justice, 2021), 2, perma.cc/HVY6-P7A9. See also Los Angeles Department of Health Services, Office of Diversion and Reentry, "Jail-Based/Clinical Diversion Innovative Programs," dhs.lacounty.gov/office-of-diversion-and-reentry/our-services/office-of-diversion-and-reentry/jail-based-clinical-diversion-innovative-programs.

²⁰ See ATI Recommendations Numbers 84 and 86 in Ross et al., *Care First, Jails Last: Health and Racial Justice Strategies for Safer Communities*, 2020, 14; see also Kuhl, *Care First, Jails Last: Establishing a Justice, Care, and Opportunities Department*, 4.

²¹ New York City's Supervised Release program began publishing its annual scorecards in 2017. This allowed for transparency in programming, outcomes, and citywide scaling. The ability of judges, prosecutors, defense counsel, and community to obtain data figures from the outset of the program's inception helped create universal buy-in and trust in the program overall. Furthermore, meeting with individual judges and prosecutors who had general questions about its work permitted staff from NYC's Supervised Release program to establish and maintain key relationships for program growth. See Miriam Popper, Senior Advisor of National Pretrial Projects at the New York City Criminal Justice Agency, panel moderated by Michelle Parris, the Vera Institute of Justice, Los Angeles, CA, September 16, 2022, vimeo.com/762449324/1f70ac3062; New York City's Mayor's Office of Criminal Justice, "Supervised Release Program," perma.cc/AL26-VEDW; and NYC Mayor's Office of Criminal Justice, *Supervised Release Annual Scorecard 2020*, 2021.

²² In 2012, New York City's average daily jail population was 12,082; it decreased to 7,365 in 2019. See New York City Mayor's Office of Criminal Justice, "Data Story: 5 Ways NYC is Safer Today," accessed December 2022, perma.cc/VM6K-NCDJ.

²³ The Sacramento Public Defender's Pretrial Support Project linked 656 people to mental health support, 322 people to substance use support, and 391 people to housing support, with a 90 to 98 percent rate of participants' successful engagement and participation. San Francisco's Pretrial Diversion Program also boasts high participation rates with a low 3 percent rearrest rate and 713 people diverted pretrial in 2021. See Sacramento Pretrial Support Project, *Sacramento County Outcomes: January 1, 2021-March 30, 2022* (Sacramento: Sacramento Pretrial Support Project, 2022), perma.cc/6PU6-M5AE; see also Judge Lawrence Brown, Dr. Ryan Quist, Tiffanie Synnott, *Addressing Equity, Public Health & Justice: Through a Holistic Defense, Multi-System Pretrial Support Project* (Sacramento: Sacramento Pretrial Support Project, 2022), 32, docs.google.com/presentation/d/1wu0CcmZIAZpqDQWu_0iXVUmlOpmu8P8_; San Francisco Pretrial Diversion Project, *Annual Impact Report: Connecting Courts, Clients, and Community* (San Francisco: San Francisco Pretrial Diversion Project), 18, perma.cc/98QG-XS8Q.