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Yolanda M. Jackson

February 1, 2021

Presiding Judge Samuel Feng
San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94102

Dear Presiding Judge Feng,

The Bar Association of San Francisco's Criminal Justice Reform Task Force ("BASF-CJTF"¹) – together with a broad coalition of criminal justice partners, including Jail Health Services, the District Attorney, the Public Defender, the conflicts panel, and S.F. Pretrial – writes again to urge the Court to reinstate, without delay, the Emergency Bail Schedule ("Zero Bail"), which the Court terminated on June 20, 2020 in the belief that the worst of the pandemic was behind us and that the *Buffin* decision controlled and/or sufficiently provided for early release.

In recognition of the continued risks posed by COVID-19, several other counties in California have taken action to preserve Zero Bail, including at least Los Angeles, Sacramento, Contra Costa, Alameda, Santa Clara, Marin, Sonoma, Riverside, Yolo, and Stanislaus. And, California legislators just introduced a bill – which has support in the State Assembly and Senate – aimed at making Zero Bail the law in California for misdemeanors and low-level felonies (SB 262/AB 329). While that bill

¹ The Bar Association of San Francisco represents 7,500 members and is the largest legal organization in Northern California dedicated to criminal justice reform. In 2015, BASF established the Criminal Justice Task Force, consisting of judges, prosecutors, public defenders, law enforcement, private counsel, civil liberties advocates, and others, to advance systemic reforms in San Francisco.

makes its way through the legislative process, we respectfully implore the San Francisco Superior Court to act now.

Many of us, including the District Attorney, Public Defender, and Pretrial, worked early in the pandemic to reduce the jail population significantly to avoid an outbreak. An outbreak in the jail would put at risk not only those living in the jail, but also those who work there—including Sheriff’s deputies, medical providers, and custodial staff.

The risk of COVID-19 has only increased given the recent surge in cases and evidence of a more contagious strain spreading. Since the Court terminated Zero Bail, the jail population has at times increased to numbers above 800. The number of COVID-positive people that comprise that population is also increasing – at an alarming rate. According to Sheriff’s Department data, while there were 75 known COVID-positive individuals in the jail in the seven-and-a-half month period between April 2020 and November 16, 2020, there have been 40 known positive people in less than 75 days since then.

Dr. Lisa Pratt, Director of the Department of Public Health Jail Health Services, has repeatedly emphasized the importance of reducing the jail population in order to prevent the spread of COVID-19. On October 13, 2020, Dr. Pratt strongly recommended that the Justice Partners implement “aggressive strategies” to reduce the jail population to guard against the concurrence of (1) an increasing number of bookings, (2) longer jail stays for those in custody, and (3) the reduction in the number of available beds as a result of the closure of County Jail #4.² Dr. Pratt also recommended that the population be maintained at 600 to contain spread of the virus and to avoid an outbreak in the jail. We are now 25% over that number.

As you know, jails are congregate living environments, with populations constantly in flux as new bookings arrive daily. Frequent turnover, small shared cells, lack of the ability to social distance, and limited space to quarantine newly arrested individuals, make them extremely dangerous

² Exhibit A, 10/14/20 letter from Dr. Pratt.

vectors for spreading the virus. Meanwhile, according to San Francisco Police Department data, overall crime is down by 24% in 2020 compared to the previous year; it is down approximately 26% over the previous year during the Zero Bail period (April 13-June 10).³ Reinstating Zero Bail is therefore an obvious and necessary choice under the circumstances, particularly since we learned last week that access to vaccinations for incarcerated people and staff who work in the jail is weeks or months away.

One additional note: the procedures implemented in the *Buffin* case require the detention of eligible individuals until there is an expedited judicial determination that public safety is not jeopardized by their release, meaning individuals spend hours in jail where they risk exposure to the virus. To the extent the Court considers *Buffin* as limiting its ability to reinstate Zero Bail, Judge Yvonne Gonzalez Rogers specifically indicated on April 13, 2020 that releasing people under Zero Bail is not inconsistent with her order in the case.

The dangers posed by COVID-19 to incarcerated people, those who work and visit the jails, and the community at large remain significant—and are only worsening. For the safety of our community, we encourage the Court to follow the guidance of public health officials and the sensible, life-saving policies adopted in other counties, and restore Zero Bail.

Sincerely,



Yolanda Jackson

Executive Director and General Counsel, The Bar Association of San Francisco

³ See <https://www.sanfranciscopolice.org/stay-safe/crime-data/crime-dashboard>



THE BAR ASSOCIATION OF
SAN FRANCISCO

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THE BAR ASSOCIATION OF
SAN FRANCISCO

Exhibit A

Letter from Dr. Lisa Pratt
Director Jail Health Services

October 13, 2020



City and County of San Francisco
London N. Breed
Mayor

San Francisco Department of Public Health

Jail Health Services
Lisa A. Pratt, MD, MPH, Director

October 13, 2020

To Criminal Justice Partners,

It has been almost seven months since my letter of March 24, 2020 in which I outlined the risks of COVID infection faced by incarcerated people in the San Francisco Jail. Based on the facilities and the operations of the jail, I suggested a goal population 700-800 people. I would like to update you on the success of our partnership toward this goal and the new challenges ahead.

Because of your efforts, we had a significant reduction in the jail population, including fewer bookings as well as fewer jail bed days. Alternatives to detention, innovations in case processing along with bail reform and the emergency "zero-bail" order issued by the California Supreme Court resulted in a 40% reduction in the population from the baseline in January of 1238 to a low in August of 738. By decreasing the population density, we have been successful in preventing jail outbreaks and controlling transmission of those who enter the jail with identified COVID infection at intake. As of the end of August, we had identified 49 cases of COVID and owing to the critical work in partnership with the Sheriff's Office, we have been able to provide masks, COVID tests and appropriate space for isolation and quarantine to all incarcerated people. We were also able to provide frequent cleaning of the facilities. As a result, we have been able to prevent spread throughout the jail.

On September 4, 2020, Sheriff Miyamoto closed County Jail 4 [located in the Hall of Justice (HOJ)] in accordance with Ordinance 80-20. This closure occurred several months ahead of the legislated deadline and is a move widely applauded by advocates, incarcerated people and city leaders. In so doing, the jail effectively reduced available bed space by approximately 400, along with critical holding space used to provide access to incarcerated people to the courts located at the Hall of Justice for required proceedings.

Since September, we have seen a steady increase in the jail population. As I write this today, the population stands at 835, the greatest number since April 1, 2020. We have seen an increase in bookings as well as transfers from other county jails and state prisons (which had previously been on hold). Following the withdrawal of the emergency bail schedule from the California judicial council at the end of June, people remain in jail longer, adding to the conditions that increase risk of COVID transmission.

This temporal occurrence of an increasing population with a cell capacity reduction of 25% after the closure of County Jail 4 means that it is increasingly difficult to keep COVID infections at bay. There are approximately 448 cells that are appropriate for COVID isolation or quarantine. The overwhelming majority of these cells are occupied by persons needing celled housing (versus open bunks in dorms) for classification (custody) reasons. The few remaining can be set aside for COVID isolation. And this is not nearly enough.

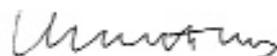
In addition to an increased population density after CJ4 closed, the sheriff's office is now required to transport incarcerated people from San Bruno to the HOJ in vans and buses throughout the day. Upon arriving to the downtown complex, incarcerated people awaiting court are then held in holding cells and areas that result in a mixing of people in different stages of quarantine and isolation. It is

virtually impossible to prevent this mixing of people, given the limited holding cells in the jails and the courts. This is how an outbreak begins in a correctional setting. One effective strategy to mitigate this particular risk is to increase the use of video court appearances and attorney conferences where possible.

As we head into the change of seasons, bringing cooler weather and holidays, we expect an increase in COVID cases. We also know there will be several court holidays that will further delay case processing. The above confluence of factors leads me to again ask for aggressive strategies to reduce the jail population. Now that CJ4 is closed, in order to protect the health of incarcerated people I would offer a target number 25% lower than the previous recommendation to correspond with the reduction in beds – with a goal of 600. I expect that with this reduced jail population, we will be able to create the distance needed to mitigate spread of COVID infection.

This public health crisis continues to endanger the lives of incarcerated people, the staff that work in the jail, and the community at large. You have demonstrated an ability to move quickly and creatively to continue to divert people from jail and decrease their length of stay.

I appreciate your continued efforts during this extraordinary time.



Lisa A. Pratt, MD, MPH