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June 14, 2024

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Margot Mendelson
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Via Email only

**Re: Response to May 15, 2024 Letter, Sacramento County
Jail Population & Superior Court Review Process**

Dear Ms. Mendelson:

The County and its District Attorney and Public Defender received your May 15, 2024 letter setting forth four questions about Sacramento County Superior Court's Review ("SCR") process.

Please see the enclosed responses.

Sincerely,

LISA A. TRAVIS
County Counsel

By: *Sarah A. Britton*
Sarah A. Britton
Deputy County Counsel

Enclosures

cc: David Villanueva, County Executive
Eric Jones, Deputy County Executive
Amanda Benson, Public Defender
Thien Ho, District Attorney
Patrick Booth, Prison Law Office
Jerrod Thompson, Prison Law Office
Aaron Fischer, Law Office of Aaron J. Fischer

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Sacramento County District Attorney's Office

THIEN HO
District Attorney

June 6, 2024

Dear Eric Jones and Sarah Britton,

We are in receipt of a letter dated May 15, 2024, and sent by Margot Mendelson, Patrick Booth, Jerrod Thompson, and Aaron Fischer (Class Counsel). By way of their letter, Class Counsel is asking for our response to four posed questions about the Sacramento Superior Court SCR process.

Rather than respond directly to Class Counsel, I am submitting our response to the two of you. It is my understanding that you will submit our response to Class Counsel. Please let me know if you have any questions.

SCR PROCESS

- 1. Can you please describe the history of the SCR, including when it began and what the original purpose was? How has the SCR process changed over time? Is the process currently meeting its original goals?**

Decades ago, a process was put into place whereby the District Attorney's Office, the Public Defender's Office, and the Superior Court would engage in an early resolution rubric resolving cases efficiently through mutual cooperation. Dedicated court rooms, with assigned judges and attorneys, were established so that at the earliest possible stage, criminal charges could be vetted, challenged or pursued as justice requires. The goal was to allow Court and counsel to resolve cases efficiently – be it by plea to the charged crime(s), plea to reduced charges, or by way of violation of probation or dismissal. It is a stark reality that in any large volume criminal calendar, such as Sacramento County, resolution of cases prior to setting of evidentiary hearings and trials is a requirement from the standpoint of court resources and administration of justice. The SCR process was determined to be an efficient and beneficial manner in which to effectuate the goals of all parties.

The SCR process does not require a defendant to waive any constitutional right – not the right to be arraigned and appointed counsel, nor their right to a preliminary hearing or trial. Rather, it allows a defendant and their attorney to appear in front of a designated home court judge and discuss potential resolution of the criminal charges pending against them in a resolution-minded setting. The defense attorney is able to conduct investigation, provide mitigation, and consider an offer to resolve the case prior to setting it for any evidentiary

hearings. This process has many benefits for all parties – defense, prosecution and the Court. Defendants are given offers that factor in their willingness to take responsibility early in the process. The People can hold defendants accountable, obtain restitution for victims, and serve the needs of public safety without the costly and time-consuming process of extended litigation. The courts can remain open and available to meet the needs of a justice system that requires courtrooms, judges, and jurors, all of which can be negatively impacted if every criminal case progresses all the way to jury trial.

The SCR process to this day allows cases to efficiently resolve at an early stage, meeting the goals it set out to achieve upon its creation. Take for example the following 2023 statistics. The Sacramento County District Attorney's general felony bureau¹ is broken up into three separate teams of attorneys. Together, all three felony teams make up the largest portion of cases in the SCR process, and each team has two attorneys dedicated to the settlement process in dedicated home courts.

Examining felony cases arraigned between January 1, 2023, and December 31, 2023, and assigned to the Felony Teams – 3,310 of those cases resolved as of May 21, 2024². Of those cases:

- 2,203 cases (67%) resolved in the SCR process, without a preliminary hearing.
- 304 cases (9%) resolved after a preliminary hearing was set, but prior to setting trial.
- 803 cases (24%) resolved while set for trial.

2. Based on your office's experience, does the SCR process impact charging decisions? If so, how?

No.

3. Based on your office's experience, does the SCR process affect the way public defenders counsel their clients? If so, how?

The District Attorney's Office is not privy to the legal counsel that Public Defenders provide to their clients. However, the shared understanding is that offers made at the SCR stage will typically be more a lenient disposition reflecting the early acceptance of responsibility. In addition, it provides the Public Defender with an opportunity to provide mitigation or investigation that might assist in efficient resolution. The SCR process is geared

¹ The general felony bureau traditionally handles lower tier felonies, and does not include "Special Teams" felonies like murder, most sex crimes, domestic violence, gang crimes and robbery series offenders.

² Data was collected with a point-in-time capture on May 21, 2024 using Power BI software.

towards mutual cooperation between the District Attorney and the Public Defender, along with the guidance of the Court.

Over the years, Public Defenders have occasionally taken inflexible stances on specific topics that hinder resolution, often seemingly based on the type of charge or presence of particular enhancements, regardless of the facts of a case. A few examples include:

- Setting a preliminary hearing in any case where the offer to resolve includes a prison sentence
- Setting a preliminary hearing in any case where the offer to resolve involves a plea for a strike offense.
- Setting a preliminary hearing in any case where the defendant remains in custody.

The District Attorney's office does not view these approaches to the settlement process as a byproduct of the SCR process, but rather as transitory philosophical stances by the Public Defender that when present demonstrably reduce the overall effectiveness of the SCR process.

4. Can you please explain, in your understanding, the extent to which the SCR process impacts the population of the jail?

The SCR court calendar process is not the litmus test to explain or understand the jail population. Many factors impact the jail population, including: the severity of crimes being committed by offenders, the danger some offenders pose to the public, chronic offenders, jail and/or county prison jail sentences imposed on defendants housed locally due to realignment, warrant status of defendants, sentenced inmates, and any other hold or commitments on defendants. The mere fact that Sacramento has an SCR calendar court is not a factor that impacts the population of the jail.

On May 21, 2024, there were 3,093 in-custody inmates in the County Jail. 2,086 of that in-custody inmate population (67%) were facing noteworthy felonies.

- 884 inmates (29%) were pending or sentenced on at least one violent felony.³
- 537 inmates (17%) were pending or sentenced on at least one serious felony.⁴
- 465 inmates (15%) were pending or sentenced on at least one significant felony.⁵
- 200 inmates (6%) were pending or sentenced on familial / domestic violence felonies.

³ Violent Felony as defined in Penal Code Section 667.5(c).

⁴ Serious Felony as defined in Penal Code Section 1192.7(c).

⁵ Significant Felony: to include crimes such as PC 29800, PC 245, VC 23153, PC 69.

A snapshot of the in-custody jail population for only felony bureau defendants currently in the SCR process further confirms that the SCR calendar court is not a factor that impacts the population of the jail.

As of May 21, 2024, there were 1,086 active felony SCR cases assigned to Felony Teams 1, 2, and 3.

- Of those active cases, there were 1,099 individual SCR defendants being prosecuted.
- Of those 1,099 individual SCR defendants, only 312 (28%) were in custody.

312 in-custody SCR defendants equate to only 10% of the 3,093 total in-custody county jail inmates. In other words, the SCR process has little impact on the jail population.

Additionally, by the time an in-custody defendant is engaged in the SCR process, there have been two opportunities for a Court to evaluate continued pretrial custodial detention of that individual.

First, a Pre-Trial Release evaluation occurs within 48 hours of arrest. This evaluation is conducted by the Probation Department in conjunction with the Court prior to any court appearance. Upon a recommendation by Probation, the Judge contemplates release of the defendant on one of six separate levels of pretrial release. Levels range from Level 1, which is just a reminder to check in with probation and return to court, all the way up to Level 6, which can involve GPS monitoring, home visits and drug testing.

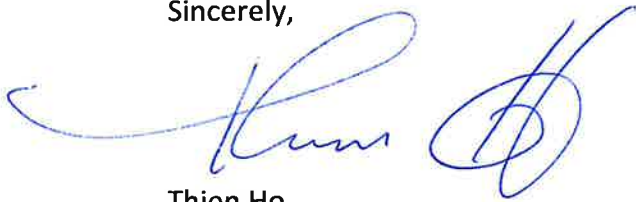
Second, on the day of the arraignment the Court holds a meeting attended virtually by attorneys from the District Attorney's Office, Public Defender and private counsel. At this meeting, the attorneys discuss with the Court whether the defendant should be held in custody further, and the Court again considers the Pretrial Release factors. In-custody defendants that remain in custody at the arraignment can ask for a bail review where a Court will determine whether continued pretrial detention is necessary to protect victims or public safety, or to secure their presence at trial under the *Humphrey* standard.

In *In re Humphrey* (2021) 11 Cal.5th 135, and the line of cases following the California Supreme Court decision, a revised procedure was established. Any in-custody defendant is entitled to a bail hearing at which the Court will assess their ability to pay and consider nonmonetary alternatives to money bail. If the Court determines a defendant is unable to afford the amount of bail the Court finds necessary, the Court follows the procedures and makes the findings necessary for a valid order of detention. If the defendant cannot post the amount set by the Court, the Court may nevertheless keep the bail set if it finds by clear and convincing evidence that no less restrictive non-financial conditions of release will assure the defendant's future court appearances. Additionally, if the Court determines by clear and convincing evidence that no condition of supervision or alternative to custody will adequately protect the public or a victim, the Court may require preventive detention without regard to

setting of a particular amount of bail – it would be a “no bail” hold. The mere fact that Sacramento has an SCR calendar court is not a factor in a defendant’s custody status.

When focusing specifically on the SCR in-custody population who remain in custody after arraignment or bail review, it is important to note that there are reasons unrelated to their custody status as to why a particular case may linger in the SCR courts. These include: the growing number of defendants pending applications for Mental Health Diversion, repeated requests by defense attorneys (appointed and private) to continue cases, and Public Defenders declaring conflicts or overloads months after the initial court appearances. Despite those obstacles, which are beyond the prosecutor’s control, examining the 2023 data proves the efficacy of the SCR process and makes plain the utility of maintaining it.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Thien Ho', followed by a large, stylized circular flourish.

Thien Ho

Office of the Public Defender

Amanda Benson
Chief Public Defender



County of Sacramento

June 10, 2024

Margot Mendelson
Patrick Booth
Jerrod Thompson
PRISON LAW OFFICE

Aaron J. Fischer
LAW OFFICE OF AARON J. FISCHER

Re: Inquiry regarding Sacramento County Jail Population & Superior Court Review Process
Mays v. County of Sacramento

Dear Ms. Mendelson, Mr. Booth, Mr. Thompson, and Mr. Fischer,

Below please find the Public Defender's responses to your inquiry dated May 15, 2024.

1. Can you please describe the history of the SCR, including when it began and what the original purpose was? How has the SCR process changed over time? Is the process currently meeting its original goals?

The SCR process has been around for at least 30 years. The attorneys and judges that first implemented it are no longer part of the criminal justice system. When those attorneys and judges retired or left the work, they took with them the knowledge of why they created this system and what their goals were. The SCR practice may have previously helped resolve cases expeditiously. Today that is not the case. The SCR now places felony cases in limbo. The SCR pauses the statutory timeframes of preliminary hearings for a promise of a "good deal." If a defendant asserts their right to a speedy preliminary hearing, the District Attorney penalizes them by refusing to discuss resolution of their case. This practice is sanctioned by the Courts.

Many jurisdictions have settlement conference hearings, but the SCR in Sacramento County is unique. To participate, defendants must agree to a de facto waiver of their Penal Code section 859b speedy preliminary hearing right¹ before they have had sufficient time to discuss their case

¹ Penal Code § 859b outlines the preliminary hearing rights of people charged with a felony. It states that when a defendant is arraigned on a felony charge, the court shall set a preliminary hearing within 10 court days. The purpose of the preliminary hearing is to ensure there is enough evidence (probable cause) to prosecute and detain the defendant. If the preliminary hearing is delayed beyond 10 days, the Court must release the defendant unless narrow exceptions apply. If the preliminary hearing is delayed beyond 60 days, the court must dismiss the case unless the defendant consents to the delay.

and their rights with an attorney. If defendants do not agree to this de facto waiver, they are not allowed to attend the SCR and told they will not receive a plea bargain in their case. Most defendants agree to this waiver of rights because they do not want to forego the possibility of a plea bargain. After they have agreed to this waiver of rights, it often takes the DA several weeks to offer a plea bargain. As a result, cases are delayed excessively for weeks and months while defendants remain in jail waiting for a plea bargain. Those who are out of custody risk rearrest if they miss one of their many SCR court dates. SCR Judges cap their calendars causing cases to be delayed even longer for the next available court date. Case processing delays lead to increased caseloads and compacted court calendars which cause further delays.

In contrast, other counties adhere to Penal Code section 859b at arraignment and set a preliminary hearing within the statutory time. This keeps the case moving forward and encourages the DA, Court, and defense to diligently negotiate a fair resolution within the statutory timeframe.

2. Based on your office's experience, does the SCR process impact charging decisions? If so, how?

The SCR process enables overcharging because it systemically removes a critical check on the DA's power - the statutory time limits imposed by Penal Code section 859b.

Prosecutors wield tremendous power in the criminal justice system, including deciding whether to file charges and whether a case is prosecuted as a misdemeanor or felony. Many cases can be charged as either a felony or a misdemeanor. Defendants charged with felonies are more likely to be held in custody pretrial and are more likely to receive longer jail sentences. Felony diversion applications require far more resources than misdemeanor applications. Felony cases are thus more costly and time consuming for the Sheriff, Public Defender, Conflict Criminal Defender, Probation, Adult Correctional Health, and Behavioral Health. In short, DA overcharging is a problem not only for defendants, but for counties and taxpayers as well.

Most counties adhere to PC 859b time limits not only because it protects defendants' rights, but also because it serves as an important check and balance on DA overcharging. Felony charges are distinct from misdemeanor charges in that felony cases require a preliminary hearing at which the prosecution must present live testimony from subpoenaed witnesses. PC 859b requires DAs to conduct this hearing 10 days after arraignment, which forces them to carefully review the police reports and evaluate whether the evidence supports a felony prosecution. This accountability discourages them from overcharging cases that should be misdemeanors.

Because Sacramento County defendants are systemically coerced into waiving their PC 859b speedy preliminary hearing right at arraignment, the DA has little incentive to carefully review the evidence before making a filing decision. As a result, Sacramento County has one of the highest felony filing rates in the state.

3. Based on your office's experience, does the SCR process affect the way public defenders counsel their clients? If so, how?

The SCR process infringes on the public defenders' ability to counsel their clients because it does not allow adequate time for the client to speak with their attorney before they are required to waive their speedy preliminary hearing right.

The SCR process requires defendants to give a de facto waiver of their speedy preliminary hearing right if they want a plea bargain. They must make this decision at arraignment without having sufficient time to discuss their case with their public defender, who has just been appointed. Because the arraignment calendar is voluminous and moves quickly, public defenders, who are not yet familiar with the facts of the case, cannot speak to clients about their cases or properly advise them on whether they should pursue a plea bargain or waive their speedy preliminary hearing right. As a result, most clients waive their speedy preliminary hearing right without effective counsel because they do not want to forego the possibility of a plea bargain.

In contrast, other counties do not force defendants to waive rights before speaking with their attorney. To our knowledge, all other large counties follow PC 859b and set a preliminary hearing within the statutory time and schedule a settlement conference on a date prior to the preliminary hearing. This allows the defendant to discuss their case with an attorney before deciding whether to waive their right and pursue a plea bargain.

4. Can you please explain, in your understanding, the extent to which the SCR process impacts the population of the jail?

The SCR process significantly contributes to jail overpopulation because it circumvents Penal Code section 859b, which leads to excessive delays and DA overcharging. Charging felonies on cases that should be misdemeanors leads to jail overpopulation because defendants charged with felonies are less likely to be released on their own recognizance and less likely to be granted bail. Defendants charged with felonies receive longer sentences and are less likely to receive alternative sentencing options like Sheriff's Work Project and community service. Sacramento County will continue to experience jail overpopulation if it continues to circumvent the PC 859b time limits.

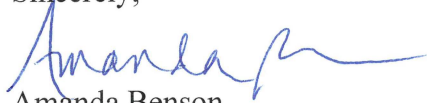
In contrast, adhering to PC 859b would help reduce the jail population in the following ways:

- The length of pretrial jail stays is reduced because cases move forward with clear deadlines.
- The court backlog of cases is reduced because the statutory time clock is ticking.
- Cases that should be dismissed or reduced for lack of evidence get dismissed or reduced more quickly if a preliminary hearing is held within 10 days.
- People with crimes that warrant a state prison sentence get transferred to state prison more quickly.
- Out of custody cases resolve more quickly, reducing the number of court appearances, failures to appear, and returns to jail.
- DAs are discouraged from overcharging because they will be required to present probable cause evidence at a preliminary hearing within 10 days for any felony they charge.
- Judges are more likely to release defendants on OR and bail on misdemeanors.

- Judges are more likely to grant mental health diversion on misdemeanors.
- Judges are more likely to allow alternative sentencing like Sheriff's work project and community service on misdemeanors.
- Attorney caseloads stay manageable, resulting in lower staff turnover, increased productivity, and less trial and sentencing delays.

Lastly, we do not have any documentation memorializing or describing the SCR process.

Sincerely,



Amanda Benson
Chief Public Defender
Sacramento County