



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: LeRonne L. Armstrong
Chief of Police

SUBJECT: Report On The “Zero Bail” Emergency
Bail Schedule

DATE: April 8, 2022

City Administrator
Approval

Date
Apr 29, 2022

RECOMMENDATION

Staff Recommends That City Council Receive An Informational Report From The Oakland Police Department (OPD) On The Impact Of The Alameda County Superior Court’s “Zero Bail” Emergency Bail Schedule On Violent Crimes In Oakland, Including A Breakdown Of Which Crimes Are Captured In The Schedule, Specific Comparative Data That Shows Whether And How Zero Bail Effects Violent Crimes In Oakland, Especially In Comparison To Those Released With Bail.

EXECUTIVE SUMMARY

A uniform bail schedule is used at the state and county level to determine the amount of money defendants must post to be released from custody until their trial and if bail is allowed based on the alleged offense. The Superior Court of California initiated a Temporary Emergency Bail Schedule (TEBS) due to the Covid pandemic. TEBS has been referred to as “zero bail” because it temporarily suspends the county bail schedule and sets zero (\$0.00) bail for most “non-violent” crimes. In April 2020, Alameda County implemented the statewide TEBS. This report shows that the new TEBS has led to situations where some people have been allowed to post bail in cases such as carrying a loaded firearm – where higher thresholds for posting bail would be required pre-TEBS. This report provides several examples where individuals with violent backgrounds on probation or parole have been able to post bail for alleged firearm related charges using TEBS guidelines, where pre-TEBS the bail protocols were more restrictive.

BACKGROUND AND LEGISLATIVE HISTORY

Alameda County Superior Court’s non-traffic misdemeanor and infraction bail schedule was last revised and adopted in 2019 and may be found at the following link:

<https://www.alameda.courts.ca.gov/sites/default/files/alameda/default/documents/2019%20Non-Traffic%20Misdemeanor%20and%20Infraction%20Bail%20Schedule%281%29.pdf>.

The Superior Court of each county in California promulgates a uniform bail schedule which sets forth presumptive bail amounts for offenses. The bail schedule is typically revised annually or as otherwise appropriate.

Public Safety Committee
May 10, 2022

Alameda County Superior Court's felony bail schedule was most recently revised on March 16, 2021 and may be found at the following link:

<https://www.alameda.courts.ca.gov/sites/default/files/alameda/default/documents/2021%20Felony%20Bail%20Schedule.pdf>.

Since the start of the Covid pandemic, the county and state have taken emergency measures to reduce incarcerated populations to prevent the spread of Covid. New emergency measures have been utilized to reduce jail sentences and to allow suspects to utilize bail to avoid initial jail sentences for cases that prior to the emergency measures would have required time in jail. For example, new rules allow for reduction or commutation of sentences for nonviolent incarcerated individuals, medically at-risk individuals, and individuals close to the end of their sentences. Additional measures were put into place which allowed the release of some arrestees and pretrial defendants more quickly.

One of the measures implemented was a mandatory Temporary Emergency Bail Schedule (TEBS) which is sometimes referred to as "zero bail" because it temporarily suspends the county bail schedule and sets zero (\$0.00) bail for most "non-violent" crimes. In April 2020 the California Judicial Council ordered all state courts in California to implement the statewide TEBS. On April 3, 2020, Alameda County implemented the statewide TEBS. The statewide TEBS implemented by the Alameda County Superior Court suspended the [bail schedule](#) for felony and misdemeanor offenses except for serious and violent felonies, as defined by penal code (PC) 1192.7 and 667.5(c) and twelve additional specified penal code (PC) violations and two Vehicle Code (VC) violations —mostly felony and misdemeanor crimes or threats against another person and non-violent offense where public safety is involved. The enumerated excepted statutes included PC 29800, felon in possession of a firearm. The enumerated statutes did not include the many other criminal firearm possession statutes, including carrying a concealed weapon, carrying a loaded firearm in public, exhibiting a firearm in a threatening manner, carrying a gun in a school zone, possessing of a firearm with a controlled substance, and manufacturing or selling assault weapons.

If a person with a prior felony was arrested with a firearm, the standard bail schedule would apply rather than the "no bail" TEBS. But if a person without a prior felony conviction was arrested for carrying a loaded firearm in their car or selling assault weapons, they would, absent other circumstances (other pending cases or post-release supervision violations) be released from custody pending charges/arraignment. The TEBS "zero bail" did not apply to any person arrested for a misdemeanor or felony "when the arrestee had been previously released on their own recognizance or pursuant to \$0 or other monetary bail."

After the statewide TEBS expired, Alameda County Superior Court implemented a revised TEBS. The currently effective county TEBS, amended in March 2021, broadened the exceptions described above in the statewide TEBS to include most other firearm crimes. That means that under the current Alameda County TEBS, all felony firearm possession crimes are no longer "zero bail," instead, the standard bail schedule applies. See **Attachment A** [Rule 4.115](#) Emergency Rule Adopting Temporary Emergency Bail Schedule (offenses which were added are in blue).

The county TEBS also continued to state that "zero bail" does not apply to any person arrested for a misdemeanor or felony "when the arrestee had been previously released on their own recognizance or pursuant to \$0 or other monetary bail;" instead, the standard bail schedule

applies. The current Alameda County TEBS also includes rules for violations of post-conviction supervision (e.g., probation and parole). All misdemeanor probation violations have zero bail. For felony supervision if the underlying crime that resulted in the supervision was a serious or violent felony or one of the excepted statutory violations (e.g., murder, felony carrying a concealed firearm, sale of an assault weapon), the presumptive bail for a violation of supervision was the standard felony bail schedule amount for the underlying conviction. That means if a person was on parole for a violation of PC 29800, felon in possession of a firearm, that any violation of that supervision would result in bail set at the level for PC 29800. For felony supervision resulting from other, non-excepted felony convictions, when the violation does not include as a basis the commission of a new serious, violent, or enumerated offense, bail is \$5,000.

As they may do with presumptive bail set by the standard bail schedules, officers may submit applications to increase the bail amount or detain arrestees without bail for any offenses that may result in bail being set prior to arraignment (appearance in court). [See PC 1269c](#). 1269c implies that while an application is pending, the arrestee is not entitled to be released by posting bail according to the applicable bail schedule. The arrestee may post bail according to the appropriate schedule if the application is not granted after 8 hours or if the application is denied sooner.

The TEBS modifies the 1269c process. [Emergency Rule 4.116](#) entitles an arrestee to post bail according to the standard bail schedule (not TEBS zero bail) even while the 1269c application is pending. If the application is not granted in eight hours, then bail returns to the amount stated in the TEBS (includes zero bail for many offenses). This allows the individuals arrested for an offense a chance to bail out immediately (notably, persons arrested for firearms or firearm and persons arrested for some violent offenses). Prior to this rule, the person arrested would have had to wait the required eight hours.

This challenge is further exacerbated by the risk factor assessment tool. Alameda County Probation Department and the Courts implemented a risk assessment tool to evaluate bail. See **Figure 1** below. This is the same tool that is utilized in the state of Virginia. See for more information: [State of Virginia risk assessment for bail](#). Below is an example of the risk assessment tool utilized by the Alameda County Department and the Courts.

Figure 1 Risk Assessment Tool to Determine Bail

RISK FACTOR	POINTS
Active community criminal justice supervision	/2
Charge is a felony drug, felony theft, or felony fraud	/3
Pending charge(s)	/2
Criminal history	/2
Two or more failures to appear	/1
Two or more violent convictions	/1
Unemployed at the time of arrest	/1
History of drug abuse	/2
Total Points	/14

ANALYSIS AND POLICY ALTERNATIVES

The Role of Bail, Parole and Probation in Oakland's Ceasefire Strategy

Ceasefire is a data-driven violence-reduction strategy coordinating law enforcement, social services, and the community. The major goal is to reduce gang/group-related homicides and shootings. Ceasefire seeks to combine the best of community energies, social services, and strategic law enforcement to reduce gun violence associated with gangs/groups far more effectively than these entities operating alone.

Oakland's successful Ceasefire Strategy¹ relies on a combination of intervention and coordinated law enforcement. OPD works closely with the Department of Violence Prevention as well as many community and faith groups to encourage alternatives to violent criminal activity. The program also requires accountability especially for individuals with prior violent convictions who are subject to parole or probation requirements. OPD staff collaborate with the parole and probation departments and hold individuals accountable for violations of their parole or probation release rules (e.g., carrying a firearm).

The California and Alameda County Emergency Bail orders have created significant challenges in keeping violent individuals off the streets. From 2012 to 2018, OPD was successful in reducing shootings and homicides by 50%. This success was contributed to the implementation of the Ceasefire Strategy², which is one of the primary tactics or "levers" utilized in partnership with the stakeholders from the Probation and Parole Department. Intelligence and/or data would alert OPD to an emerging conflict or active conflict between groups or individuals. The oversight by the Probation and Parole entity was of the methodologies employed by OPD's successful Ceasefire Strategy which led to reductions in shootings and homicides over several years. Many of the individuals involved in group or gang violence were often on some form of supervised

release. OPD officers could engage with these individuals in collaboration with the Parole and Probation Departments for greater oversight.

The goal of the Ceasefire strategy was to encourage and dissuade individuals from violent criminal activity, and to arrest them if in possession of illegal firearms which could be used to victimize members of the public. The OPD staff and stakeholders communicated and outlined the consequences to the identified individuals during the “call-ins” which included the threat of jail or prison. Additionally, during the call-ins, OPD staff and community members encouraged individuals who were identified as being connected to violent crime to consider other positive options or alternatives in contrast to violence and dangerous conflicts.

The modified bail order has interrupted OPD’s ability to effectively and successfully implement this crucial component of the Ceasefire strategy because one of the repercussions for failing to attend a Ceasefire call-in session was the violation of their probation. Additionally, the level of participation with the Ceasefire call-in program has significantly reduced from 80% to 40%. This reduction is believed to be associated with the TEBS and the jail’s inability to hold probationers (or in some cases parolees) solely on a violation for not attending mandated Ceasefire call-ins. Therefore, individuals have less motivation to attend Ceasefire call-ins. OPD is not able to reach out to many individuals who have been identified as those with the highest risk of perpetrating gun violence or becoming a victim(s) of gun violence.

The number of arrests or convictions for violent crimes is not weighed or considered in the bail process, a person will be given \$5,000 bail for probation or parole violations under TEBS. Additionally, a \$5,000 bail can be paid with only \$500 through the bail bond service. This system (process) does not require an evaluation/assessment by the supervising parole or probation officer. In some instances, the probation or parole officer are not aware of their client’s arrest. In these situations, the client (person arrested who is on formal probation or parole) can post bail based on the modified bail schedule. Furthermore, the process excludes the input of the supervising parole and/or probation officer from the review of the person’s history of crime and/or violence.

Probation officers and parole officers also reported challenges with the TEBS. They pointed out how they felt the negative impact of these bail measures. Probation Officers are assigned to work with OPD in its Ceasefire Section since the program’s inception. These probation officers already face procedural challenges - clients circumvent supervision by removing GPS trackers placed on them to monitor whereabouts. Despite removing GPS tracking devices, probationers are not being remanded into custody for violating probation terms. Parole Officers who meet with OPD regularly expressed the same frustration. Parolees are bailing out on parole holds despite having very violent criminal histories. This is worrisome considering the number of inmates that were released back into the community from state prison and county jails in response to Covid-19.

Examples of subjects who have been released under TEBS

Generally, the Oakland Police Department (OPD) has noted a correlation between the post-pandemic period and an increase in homicides and violent crime. From January 1st to March 1st, 2020, Oakland recorded 5 homicides – an average of 2.5 homicides per month. From March 1st to August 1st, 2020, Oakland recorded 41 homicides – 8.2 homicides per month.

Below are some examples of arrestees or persons on post-release supervision who were released under presumptive bail terms (including zero bail) in place pursuant to the TEBS.

Subject A

Subject A was arrested in July 2020 arrested and spent 2 days in jail. Subject A was out on "Zero Bail" for 30605. OPD arrested subject a second time for 32625 while out on "Zero Bail." Subject A was again released under TEBS. August 16th, 2020, subject's second gun was linked to 2 homicides. Subject was placed under surveillance and was observed shooting 2 people. Subject A was arrested for shootings and charged with 2 counts of attempted homicide. Suspect A is in custody.

Subject B

Subject B was charged with murder and pled guilty to manslaughter in 2004. While out on parole in October 2021, Subject B fired over 70 shots at 2 subjects in East Oakland. While fleeing the shooting scene, Subject B crashed head-on into a police vehicle. Under TEBS Suspect B was able to get bail in amount of \$130,000 and then bailed out of jail 2 days after arrest despite weapons charge and parole hold. OPD worked with federal partners who eventually prosecuted subject for weapons charges. Subject is now in custody.

Subject C

Subject C was released for "Zero Bail" on assault charges involving a complaint filed by his neighbor in East Oakland. After being released, Subject C returned the next day and murdered their neighbor May 1, 2020. Subject C has been arrested and charged with the neighbor's murder. Subject C is in custody.

Subject D

Subject D was released on "Zero bail" for a robbery in Beverly Hills August 2020. While out on bail, a search warrant was executed by OPD on September 8, 2020, at Subject D's residence which yielded 5 guns, including assault rifles. The Court released Subject D two days later on Subject D's own recognizance, despite a pending robbery case in addition to the weapons arrest.

Subject E

Subject E was on PRCS (Felony Probation) for 273.5 and 11352. Subject E was arrested for an armed home invasion in San Leandro in January 2021. Subject E was arrested and was assigned bail in the amount of \$150,000. Subject E made bail with no evaluation of the arrest by his Probation Officer or a Judge. TEBS allowed the subject to post bail for his PRCS violation (based on the bail schedule amount for the underlying crime), while the suspended standard bail schedule has no presumptive bail for a PRCS violation. Absent TEBS, Subject E would have had to wait and had bail set by the court.

Subject F

Subject F was arrested for a \$200,000 warrant for a shooting. Subject F was also arrested for possession of a loaded weapon. Suspect F was arrested for Attempted Murder on a Police Officer. Bail was set at zero. However, Subject F appeared in Court and bail set at \$255,000 despite prior actions including gun possession and attempted murder. Suspect F shot two DEA agents, one of which died. A police officer was also shot. Subject F was killed during the incident.

Subject G

Subject G was arrested for carrying a loaded firearm September 26, 2020. Subject G was released under TEBS 1 day later. On September 28, 2020, Subject G was one of 3 suspects in a homicide/shooting of 2 victims. Suspect G was arrested for attempted homicide of surviving victim and is in custody.

Subject H

Subject H was arrested for burglary March 5, 2020 and was released under TEBS April 1, 2020. Subject H was arrested July 25, 2020, for an attempted homicide and is in custody.

Subject I

Subject I was arrested for possession of a firearm June 6, 2020. Released under TEBS on June 8, 2020. Subject I was arrested October 22, 2020, for homicide and is in custody.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for this report beyond the standard City Council agenda noticing procedures.

COORDINATION

No interagency coordination was required for the production of this report.

FISCAL IMPACT

There is no fiscal impact associated with informational report.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

Race and Social Equity: Many victims of violent crime in Oakland come from disadvantaged communities. Efforts to better support crime investigations and make data publicly available support the City's goals of greater race and social equity.

ACTION REQUESTED OF THE PUBLIC SAFETY COMMITTEE

Receive An Informational Report From The Oakland Police Department (OPD) On The Impact Of The Alameda County Superior Court's "Zero Bail" Emergency Bail Schedule On Violent Crimes In Oakland, Including A Breakdown Of Which Crimes Are Captured In The Schedule, Specific Comparative Data That Shows Whether And How Zero Bail Effects Violent Crimes In Oakland, Especially In Comparison To Those Released With Bail.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LeRonnie L. Armstrong", written over a horizontal line.

LeRonnie L. Armstrong
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