



AGENDA REPORT

TO: City Council and Members of the Public

FROM: City Attorney Barbara J. Parker
Councilmember Nikki Fortunato Bas
Councilmember Lynette Gibson McElhaney
Councilmember Loren Taylor

SUBJECT: Resolution Calling Upon Alameda County's Sheriff's Office and Chief Probation Officer and Other Alameda County Officials to Take Necessary Measures to Protect the Health and Safety of Detained and Incarcerated Individuals During the Local COVID-19 Emergency

DATE: April 21, 2020

RECOMMENDATION

City Attorney Barbara J. Parker, Councilmember Nikki Fortunato Bas, Councilmember Lynette McElhaney, and Councilmember Loren Taylor recommend that the City Council adopt a resolution: (1) supporting the Alameda County Public Defender's urgent call for the immediate release all inmates with six months or less remaining to serve at Santa Rita Jail; (2) urging the Alameda County Sheriff's Office, the Alameda County Probation Department, and other Alameda County officials to take all necessary steps to ensure the health and safety of those individuals held in confinement at Alameda County adult and juvenile detention facilities, including following the steps it has not yet taken that are set forth in the City Attorney's March 24, 2020 letter that is attached as Exhibit A to the resolution; and (3) directing the City Clerk to send copies of the resolution and Exhibit A to the resolution to Alameda County's Sheriff, Chief Probation Officer, Board of Supervisors, Public Defender and District Attorney, Governor Gavin Newsom, Assemblymembers Rob Bonta and Buffy Wicks, State Senator Nancy Skinner, Congresswomen Barbara Lee and Nancy Pelosi, and U.S. Senators Dianne Feinstein and Kamala Harris.

EXECUTIVE SUMMARY

COVID-19, a highly infectious virus: (1) was first identified in late 2019; (2) is marked by severe and acute respiratory illness that has overwhelmed hospitals around the world; and (3) disproportionately impacts older individuals, individuals with underlying health conditions, and African Americans who have mortality rates that are more than two

City Council
April 21, 2020

Subject: Resolution Calling Upon the Alameda County Sheriff's Office and Other Alameda County Entities to Take Necessary Measures to Protect the Health and Safety of Detained and Incarcerated Individuals During the Local COVID-19 Emergency

times and in some cases three times their percentage of a state's or city's population.¹ Although the virus does not discriminate, our systems of government do: structural inequalities, legalized racial discrimination, followed by implicit bias and institutional racism have long permeated every aspect of American life, from which communities suffer most from mass incarceration to who has access to high quality health care. Thus the impact of COVID-19 has disproportionately impacted African Americans and other marginalized communities: historically marginalized populations have suffered and will suffer far more in this public health crisis.²

This heavier burden is exacerbated by conditions of confinement: in juvenile and immigrant detention centers, in jails, and in prisons, privacy is rare or comes at the price of forcing those detained and incarcerated into conditions that effectively constitute solitary confinement.³ Basic social distancing measures required to limit viral spread are nearly impossible.⁴ Few facilities have adequate personal protective equipment ("PPE") and hygiene facilities for their own staff members, let alone for detained and incarcerated people.⁵ As such, COVID-19 is racing through detention and incarceration

¹ Melanie Barden, "Statistics show minority communities are disproportionately affected by coronavirus," CBS Austin (April 13, 2020), *available at*: <https://cbsaustin.com/news/local/statistics-show-minority-communities-are-disproportionately-affected-by-coronavirus>; Eugene Scott, "4 reasons coronavirus is hitting black communities so hard," *Washington Post* (April 10, 2020), *available at*: <https://www.washingtonpost.com/politics/2020/04/10/4-reasons-coronavirus-is-hitting-black-communities-so-hard/>; Akilah Johnson and Talia Buford, "Early Data Shows African Americans Have Contracted and Died of Coronavirus at an Alarming Rate," *ProPublica* (April 3, 2020), *available at*: <https://www.propublica.org/article/early-data-shows-african-americans-have-contracted-and-died-of-coronavirus-at-an-alarming-rate>.

² *Id.*

³ Erica Green, "'Pacing and Praying': Jailed Youths Seek Release as Virus Spreads," *The New York Times* (April 14, 2020), *available at*: <https://www.nytimes.com/2020/04/14/us/politics/coronavirus-juvenile-detention.html> ("Green"); Timothy Williams & Danielle Ivory, "Chicago's Jail Is Top U.S. Hot Spot as Virus Spreads Behind Bars," *The New York Times* (April 8, 2020), *available at*: <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>.

⁴ German Lopez, "A coronavirus outbreak in jails or prisons could turn into a nightmare," *Vox.com* (March 17, 2020), *available at*: <https://www.vox.com/policy-and-politics/2020/3/17/21181515/coronavirus-covid-19-jails-prisons-mass-incarceration>; Roy L. Austin, Jr., Vanita Gupta, and Miriam Aroni Krinsky, "Mr. President, let vulnerable people out of federal prisons now: Coronavirus demands a bold response," *New York Daily News* (Apr. 14, 2020), *available at* <http://www.nydailynews.com/opinion/ny-oped-let-vulnerable-people-out-of-federal-prisons-20200414-zk7uqv7cxjbmffz43nwwzbn5qq-story.html>.

⁵ David Shortell & Kara Scannell, "New coronavirus cases in US jails heighten concerns about an unprepared system," *CNN.com* (March 20, 2020), *available at*: <https://www.cnn.com/2020/03/18/politics/coronavirus-in-us-jails-heighten-concerns/index.html>; Keri Blakinger & Beth Schwartzapfel, "When Purell is Contraband, How Do You Contain

Subject: Resolution Calling Upon the Alameda County Sheriff's Office and Other Alameda County Entities to Take Necessary Measures to Protect the Health and Safety of Detained and Incarcerated Individuals During the Local COVID-19 Emergency

facilities across the country, harming Black and Brown populations whose overall disproportionate representation in the justice system means that COVID-19's effects are multiplying existing inequality.⁶ Indeed, the rate at which COVID-19 spreads in jails and prisons is many times higher than in the community at large.⁷

This dire situation has ripple effects beyond those detained and incarcerated. Staff required to continue to work in these conditions face the choice between their income and their own health, safety and lives and those of their families. The families of detained and incarcerated individuals are not only cut off from in-person visits with their loved ones, but many are struggling with both job losses and the burden of paying their detained or incarcerated family member's fines, fees, restitution, or other legal financial obligations.⁸

Some justice system officials claim that limited public health releases of detained and incarcerated individuals put public safety at risk.⁹ Not so. Considered, compassionate release of portions of detained and incarcerated populations (e.g., people in high risk categories, such as those over 65 or with underlying health conditions; people awaiting trial for non-violent offenses; people with under six months left to serve) would protect public health while also protecting public safety. There is no justification for any local authority to fail to meet this moment with steps and measures to protect lives.

Coronavirus?," The Marshall Project (March 6, 2020), *available at*: <https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus>.

⁶ See, e.g., Rita Rubin, "The Challenge of Preventing COVID-19 Spread in Correctional Facilities," *Medical News and Perspectives* (April 7, 2020), *available at*: <https://jamanetwork.com/journals/jama/fullarticle/2764379>; Sam Levin, "'We're gonna die': migrants in US jail beg for deportation due to Covid-19 exposure," *The Guardian* (April 4, 2020), *available at*: <https://www.theguardian.com/world/2020/apr/04/us-jail-immigrants-coronavirus-deportation>; Green.

⁷ Austin, Gupta, and Krinsky, *supra* n.4 (COVID-19 infection rate at Rikers Island Jail eight times the rate of community spread); Max Blumenthal, "More people will die," *Chicago Reader* (Apr. 14, 2020), *available at* <https://www.chicagoreader.com/chicago/cook-county-jail-coronavirus-lawsuit/Content?oid=79233456> (COVID-19 infection rate at Cook County, Illinois jail is 30 times higher than across Chicago as a whole).

⁸ Fines & Fees Justice Center, "COVID-19 Fines and Fees Policy Tracker," *available at*: <https://finesandfeesjusticecenter.org/articles/ffjc-policy-recommendations-for-the-covid-19-crisis/>.

⁹ See, e.g., Sontaya Rose, "Inmates receiving 'get out of jail free' card during COVID-19 crisis, sheriff says," ABC30 (April 13, 2020), *available at*: <https://abc30.com/sheriff-fresno-county-sheriff-s-office-covid-19-coronavirus/6100484/>.

Subject: Resolution Calling Upon the Alameda County Sheriff's Office and Other Alameda County Entities to Take Necessary Measures to Protect the Health and Safety of Detained and Incarcerated Individuals During the Local COVID-19 Emergency

REASON FOR URGENCY

This resolution is of the utmost urgency. The number of COVID-19 cases globally has doubled in less than two weeks, and now stands at nearly two million tested, reported cases worldwide.¹⁰ The United States is no exception to this trend. Given this, experts across the country, from the New England Journal of Medicine to hundreds of former Department of Justice officials, agree that safe, compassionate, targeted decarceration is a key strategy for reducing the spread of COVID-19 among detained and incarcerated people and our communities.¹¹ Every day of delay is likely to cost lives.

BACKGROUND

The COVID-19 pandemic has brought much of the world to a halt. The virus has spread rapidly across the United States, resulting in approximately 600,000 infections and more than 25,000 deaths through April 14.¹² As of April 14, there are 886 cases of COVID-19 in Alameda County, and 23 people have died.¹³ In addition to the grave public health impact of the virus, the measures taken to contain its spread, such as the State's shelter-in-place order, have exacted a painful economic toll on residents, with more than 2.1 million Californians (approximately 11% of the labor force) claiming unemployment since mid-March.¹⁴

COVID-19 has been demonstrated to spread rapidly where there are high concentrations of people living in close proximity. People held in custody at detention facilities, including jails, prisons, and juvenile and immigration detention centers, are among the most vulnerable. This is because detention facilities often house dense

¹⁰ "COVID-19 Dashboard," Center for Systems Science and Engineering (CSSE), Johns Hopkins University, *available at*: <https://coronavirus.jhu.edu/map.html>.

¹¹ Matthew J. Akiyama, Anne C. Spaulding, & Josiah D. Rich, "Flattening the Curve for Incarcerated Populations — Covid-19 in Jails and Prisons," *New England Journal of Medicine* (April 2, 2020), *available at*: <https://www.nejm.org/doi/full/10.1056/NEJMp2005687>; Fair & Just Prosecution, "Over 400 Former US Attorneys, DOJ Leaders and Attorneys, and Judges Urge President Trump to Release Vulnerable Individuals from Federal Custody to Avoid Deadly Outbreak of COVID-19," *available at*: <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Trump-COVID19-Press-Release-Final.pdf> ("DOJ letter").

¹² See n. 9.

¹³ Alameda County Department of Public Health, <http://www.acphd.org/2019-ncov.aspx>.

¹⁴ Samuel Stebbins, "Unemployment: These are every state's claims since the coronavirus shut the economy down," *USA Today* (April 14, 2020), *available at*: <https://www.usatoday.com/story/money/2020/04/14/coronavirus-unemployment-claims-caused-covid-19-crisis-state/5130034002/>.

Subject: Resolution Calling Upon the Alameda County Sheriff's Office and Other Alameda County Entities to Take Necessary Measures to Protect the Health and Safety of Detained and Incarcerated Individuals During the Local COVID-19 Emergency

populations in close quarters, and have limited sanitation facilities and PPE necessary to prevent the spread of the COVID-19 virus.¹⁵

Jails and prisons in the United States are already experiencing devastating outbreaks of COVID-19. At Riker's Island jail in New York, more than 800 inmates and staff have tested positive. At least three inmates---two men held for alleged parole violations¹⁶ and a 63-year old man awaiting trial¹⁷---have died from COVID-19. The jail in Cook County, Illinois has one of the highest rates of infection for COVID-19 anywhere in the country, with more than 500 infections and three deaths so far.¹⁸ Juvenile detention centers have also seen rapid outbreaks of COVID-19.¹⁹

Santa Rita Jail in Alameda County is the third-largest jail in California, and the fifth largest in the nation.²⁰ Alameda County officials, including the Alameda County Sheriff, District Attorney, and Probation Department, have stated that they have taken certain steps to protect the population of this facility from the spread of the virus, including releasing more than 600 pre-trial detainees and inmates, educating those still confined about symptoms of COVID-19 and proper hygiene practices, segregating inmates considered "high risk" for COVID-19, and providing free soap and cleaning supplies.²¹ Nevertheless, at least 1,896 individuals continue to be confined at Santa Rita Jail.²² In

¹⁵ Timothy Williams, Benjamin Weiser & William K. Rashbaum, "Jails Are Petri Dishes": Inmates Freed as the Virus Spreads Behind Bars," *The New York Times* (March 31, 2020), available at: <https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html>.

¹⁶ Justin Carissimo, "First Rikers Island inmate dies after testing positive for coronavirus," CBS News (April 8, 2020), available at: <https://www.cbsnews.com/news/coronavirus-michael-tyson-rikers-island-inmate-dies-covid-19/>; Jan Ransom, "Jailed on a Minor Parole Violation, He Caught the Virus and Died," *The New York Times* (April 9, 2020), available at: <https://www.nytimes.com/2020/04/09/nyregion/rikers-coronavirus-deaths-parolees.html>.

¹⁷ Rebecca Rosenberg, "Second Rikers Island inmate dead from coronavirus after failed release," *New York Post* (April 14, 2020), available at: <https://nypost.com/2020/04/14/second-rikers-island-inmate-dead-from-coronavirus/>.

¹⁸ Cheryl Corley, "The COVID-19 Struggle In Chicago's Cook County Jail," NPR (April 13, 2020), available at: <https://www.npr.org/2020/04/13/833440047/the-covid-19-struggle-in-chicagos-cook-county-jail>.

¹⁹ Tyler Kingkade, "'I'm scared for my child': Coronavirus hits Louisiana juvenile detention centers," NBC News (April 13, 2020), available at: <https://www.nbcnews.com/news/us-news/i-m-scared-my-child-coronavirus-hits-louisiana-juvenile-detention-n1182756>; Green.

²⁰ Alameda County Sheriff's Office, available at: https://www.alamedacountysheriff.org/dc_srj.php.

²¹ Alameda County Sheriff's Office, available at: https://www.alamedacountysheriff.org/admin_covid19.php.

²² *Id.*

Subject: Resolution Calling Upon the Alameda County Sheriff's Office and Other Alameda County Entities to Take Necessary Measures to Protect the Health and Safety of Detained and Incarcerated Individuals During the Local COVID-19 Emergency

addition, Alameda County holds 56 juveniles at Juvenile Hall, and 24 at Camp Sweeney.²³ All of these individuals remain at grave risk of contracting COVID-19.

The Alameda County Public Defender, Brendon D. Woods, has advocated for Alameda County officials to take urgent steps to further reduce the incarcerated population at Santa Rita, including by releasing those with six months or less remaining on their sentences.²⁴ Releasing those within six months of the end of their sentences is a measure supported by prosecutors and sheriffs from across the country.²⁵ Alameda County officials, however, have failed to release the approximately 115 individuals who have six months or less remaining to serve at Santa Rita.

On March 24, 2020, Oakland City Attorney Barbara J. Parker sent a letter to the Alameda County Sheriff and the Chief Probation Officer expressing concern about the health and well-being of the staff and incarcerated individuals at Alameda County adult and juvenile detention facilities.²⁶ The City Attorney's letter, included as Exhibit A to the accompanying resolution, urged the Sheriff's Office and Probation Department to take various steps to reduce the incarcerated population and protect the well-being of those still detained. The City Attorney's letter also asked these officials to take measures to reduce or suspend the fees, fines, and other legal financial obligations inflicted by the criminal justice system, which could be devastating for families coping with job losses and other economic disruptions caused by the pandemic. The Sheriff responded that he "did not have time" to respond to the listed concerns that the City Attorney expressed, although it appears that at least some of the measures outlined in the City Attorney's letter have since been implemented at Santa Rita.

COVID-19 has now broken out and is spreading at Santa Rita Jail. Since the first case was reported on April 4, 15 incarcerated individuals and two staff members have contracted the disease.²⁷ Six have recovered so far. Alameda County officials' failure to

²³ Bay City News, "Alameda County Probation Officer Concerned About Lack of Infrared Thermometers," NBC Bay Area (April 1, 2020), *available at*: <https://www.nbcbayarea.com/news/local/east-bay/alameda-county-probation-officer-concerned-about-lack-of-infrared-thermometers/2265342/>.

²⁴ Megan Cassidy, "Spike in coronavirus cases at Santa Rita Jail prompts clash between public defender, D.A.," *San Francisco Chronicle* (April 9, 2020), *available at*: <https://www.sfchronicle.com/crime/article/Spike-in-coronavirus-cases-at-Santa-Rita-Jail-15190792.php>

²⁵ DOJ Letter; Law Enforcement Action Partnership, "Joint Statement from Elected County Sheriffs on COVID-19," *available at*: <https://lawenforcementactionpartnership.org/wp-content/uploads/2020/04/National-Sheriff-Statement-COVID-19-1.pdf>.

²⁶ See Exhibit A.

²⁷ See n. 20.

Subject: Resolution Calling Upon the Alameda County Sheriff's Office and Other Alameda County Entities to Take Necessary Measures to Protect the Health and Safety of Detained and Incarcerated Individuals During the Local COVID-19 Emergency

take more aggressive steps to protect those held in custody---including by releasing individuals with six months or less left on their sentences---endangers the health of the nearly 2,000 inmates still in Santa Rita. As Public Defender Woods has argued, absent rapid decarceration, the situation at Santa Rita Jail could quickly resemble Cook County jail, where over 500 people have been infected.²⁸ Further, given the high likelihood of an outbreak in Alameda County's juvenile detention facilities, the well-being of the dozens of children who are detained also could be at risk.

ANALYSIS AND POLICY ALTERNATIVES

As described above, the City Attorney sent a letter to the Alameda County Sheriff and Chief Probation Officer, urging them to take steps to address the grave risks March 24th. The co-sponsors of this Resolution welcome collaboration with Alameda County officials. However, given the gravity of COVID-19 and the urgency we face, this resolution by the City's elected leaders will highlight and emphasize the critical status of detained and incarcerated individuals and hopefully help to spur actions that will be an initial step toward COVID-19 justice for detained and incarcerated people and our broader affected communities; and will be the starting point for additional policy considerations with respect to Oakland's own approaches to the justice system during and after the local emergency.

FISCAL IMPACT

The average cost of hospitalization for a severe respiratory illness requiring a ventilator is approximately \$40,218.²⁹ That cost will ultimately be passed onto taxpayers. Thus the City and County may see potential cost savings from reducing the number of detained or incarcerated people who get seriously ill with COVID-19, and could instead direct that funding at assisting families struggling most significantly under shelter-in-place orders, including families of returning detained and incarcerated individuals.

PUBLIC OUTREACH / INTEREST

Numerous stakeholders have requested that action be taken to reduce detained and incarcerated populations to protect against the dangerous spread of COVID-19.

²⁸ <https://twitter.com/BrendonWoodsPD/status/1248356028300722176?s=20>

²⁹ Larry Levitt, Karyn Schwatz & Eric Lopez, "Estimated Cost of Treating the Uninsured Hospitalized with COVID-19," Kaiser Family Foundation (April 7, 2020), *available at*: <https://www.kff.org/uninsured/issue-brief/estimated-cost-of-treating-the-uninsured-hospitalized-with-covid-19/>.

Subject: Resolution Calling Upon the Alameda County Sheriff's Office and Other Alameda County Entities to Take Necessary Measures to Protect the Health and Safety of Detained and Incarcerated Individuals During the Local COVID-19 Emergency

COORDINATION

This report and legislation were coordinated with the City Attorney's office and the offices of the City Councilmembers who are listed as co-sponsors.

SUSTAINABLE OPPORTUNITIES

Economic: The average cost of hospitalization for a severe respiratory illness requiring a ventilator is approximately \$40,218.³⁰ That cost will ultimately be passed onto taxpayers. Thus the City and County may see potential cost savings from reducing the number of detained or incarcerated people who get seriously ill with COVID-19, and could instead direct that funding at assisting families struggling most significantly under shelter-in-place orders, including families of returning detained and incarcerated individuals.

Environmental: There are no environmental impacts.

Race & Equity: As described above, African Americans, in particular, and other communities of color are being disproportionately harmed by COVID-19, a fact only multiplied by ongoing conditions of confinement. These harms also ripple out to the staff at such facilities and the families of staff and detained and incarcerated people, who also are disproportionately communities of color. This resolution therefore supports social, racial, and economic justice.

ACTION REQUESTED OF THE CITY COUNCIL

The co-sponsors, Councilmembers Bas, McElhaney and Taylor and City Attorney Parker recommend that the City Council adopt a resolution: (1) endorsing the Alameda County Public Defender's proposal to immediately release all inmates with six months or less remaining to serve at Santa Rita Jail; (2) urging the Alameda County Sheriff's Office, the Alameda County Probation Department, and other Alameda County officials to take all necessary steps to ensure the health and safety of those individuals held in confinement at Alameda County adult and juvenile detention facilities, including following the steps they have not yet taken that are set forth in the City Attorney's letter that is Exhibit A to this resolution; and (3) sending copies of the resolution and its Exhibit A to Alameda County's Sheriff, Chief Probation Officer, Board of Supervisors, Public Defender and District Attorney, Governor Gavin Newsom, Assemblymembers Rob Bonta and Buffy Wicks, State Senator Nancy Skinner, Congresswomen Barbara Lee and Nancy Pelosi, and U.S. Senators Dianne Feinstein and Kamala Harris.

³⁰ *Id.*

City Attorney Barbara J. Parker; Councilmember Nikki Fortunato Bas; Councilmember Lynette McElhaney; Councilmember Loren Taylor

Subject: Resolution Calling Upon the Alameda County Sheriff's Office and Other Alameda County Entities to Take Necessary Measures to Protect the Health and Safety of Detained and Incarcerated Individuals During the Local COVID-19 Emergency

Page 9

For questions regarding this report, please contact Barbara J. Parker, City Attorney, at 510-238-3601 and Councilmember Nikki Fortunato Bas as 510-238-7002, Councilmember Lynette Gibson McElhaney at 510-238-7003 and Councilmember Loren Taylor at 510-238-7006

Respectfully submitted,



Barbara J. Parker
City Attorney



Nikki Fortunato Bas
Councilmember, District 2



Lynette Gibson McElhaney
Councilmember, District 3

Loren Taylor
Councilmember, District 6

Reviewed by:
[insert reviewer(s)]

Prepared by:
Zoe M. Savitsky, Deputy City Attorney
Karun Tilak, Public Rights Project Fellow
City Attorney's Office

City Council
April 21, 2020