



## **Bail Reform and the San Francisco Pretrial Diversion Project: Preserve Independence and the Presumption of Innocence Until Proven Guilty**

### **SF Pretrial Background and Mission**

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The City & County of San Francisco is currently deciding whether to eliminate decades of criminal justice and court reform in favor of a pretrial system that operates within law enforcement. For 43 years, the San Francisco Pretrial Diversion Project (SF Pretrial) has operated as an independent, non-profit organization that provides case management, supervision, and assessment services for justice-involved populations in San Francisco. Throughout our lengthy collaboration with the county justice system, we have provided industry-leading alternatives to fines, criminal prosecution, and detention. Our mission aligns with the goals of our partners at every level of the San Francisco justice system: ensure that individuals charged with a crime appear for trial, achieve maximum rehabilitation, and contribute to the safety of our communities.

SF Pretrial's success is due in large part to our unique position at the nexus of the courts, prosecution, and defense. Our pretrial programs provide a full spectrum of services, from restorative justice and behavioral health support groups to diversion and release. We work adeptly in formal and informal contexts; outreaching to clients in the streets, liaising with judges, and working inside the jail to facilitate pretrial release. Through our tenured experience in these areas and others, we have built deep relationships with community and institutional partners.

Neutrality is a key element to SF Pretrial's success; our independent, nonprofit status allows us to maneuver deftly among the Courts, District Attorney's Office, and Public Defender or Private Counsel to make recommendations on behalf of public safety and our clients. Senate Bill 10, recently passed by the California legislature and signed into law by Governor Brown, undermines this framework. We ask for your support in seeking a legislative solution.

### **SF Pretrial History**

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In 1964, the San Francisco Bar Association established the Own Recognizance (O.R.) Project. This agency, which later transitioned to SF Pretrial, was unprecedented in the criminal justice community at that time and required the cooperation of the Courts, District Attorney, Public Defender, SFPD, Adult Probation, and Sheriff. In 1968, the San Francisco Bar Association received an "Award of Merit" in recognition of their work in sponsoring this project.<sup>1</sup>

The O.R. Project, originally designed to operate for two years as a pilot, has been in place for over 50 years and eventually merged into SF Pretrial. The unique role of this independent agency was always viewed as vital to its effectiveness, with a 1965 Bar Association of San Francisco article recognizing that "because of the non-adversary nature of the proceedings, some agency whose function is non-adversary, appears best suited to assume responsibility for future operations."<sup>2</sup>

Since its inception, SF Pretrial has added more programs designed to address the various needs of the court, its clients, and the community. Currently, SF Pretrial's programs include: 1) alternatives to fines through our Street and Environmental Services Program and Projects 20 and 22; 2) a

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<sup>1</sup>Levin, G. S. (1969). The San Francisco Bail Project. *American Bar Association Journal*, 135-137.

<sup>2</sup> (1965). San Francisco Bail Project- A Hopeful Experiment. *The Brief Case*.

restorative justice model to resolve non-violent and misdemeanor crimes (in partnership with the District Attorney's Office and the Neighborhood Courts); 3) dismissal of charges for first-time misdemeanor offenders in exchange for completion of a treatment plan; 4) facilitated release through the Own Recognizance Project, 5) Assertive Case Management (ACM) for high-need clients; 6) internal anger management, substance abuse, mental health, therapeutic groups and services; 7) connections to local housing, education and behavioral health programs; 8) support for Veterans and Parole Reentry Courts; and 9) enrollment in Medi-Cal for in-custody clients.

In early 2015, San Francisco began the process of assessing readiness and implementing the Arnold Foundation's Public Safety Assessment (PSA), a risk tool that promotes safety, equity, and justice, in consultation with Justice System Partners. As the agency providing court and criminal history summaries, SF Pretrial was identified as a lead stakeholder in the implementation process.

The PSA Working Group was established in August 2015 and consists of partners from the Sheriff's Department, Superior Court, SF Pretrial, District Attorney's Office, Public Defender's Office, SF Criminal Conflicts Panel, and SF Reentry Council/Division of Adult Probation Department. The Working Group reviewed and advised on the timeline; provided input into the California PSA Violent Offenses List; and developed the Decision Making Framework, Court Report Template, Quality Assurance and Outcome Measures. The PSA Working Group continues to meet on a quarterly basis. All materials developed by the PSA Working Group are maintained by SF Pretrial.

SF Pretrial is currently working with the California Policy Lab (CPL) to create an interactive dashboard and detailed reports tracking outcomes, client demographics, and concurrence rates. CPL is analyzing PSA data and its impact on racial and ethnic disparities in release decisions, which will inform San Francisco's criminal justice system and efforts to address equity.

## **Statewide Bail Reform (SB 10)**

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SF Pretrial has long recognized the need for statewide bail reform. As the presumption of innocence is one of the most fundamental principles of our justice system, we believe that no person should be forced to stay in jail due to an inability to pay bail. Pretrial incarceration can result in individuals losing their jobs, housing, or custody of their children.<sup>3</sup> In addition, individuals who remain in jail pretrial are convicted at higher rates, sentenced to longer periods of time, and are more likely to be re-arrested than comparable, non-incarcerated defendants.<sup>4</sup> On the other hand, families who pay bail are often forced into debt and may lose their vehicles and/or homes.

While the need for bail reform is ever-present, SB 10 threatens to dissolve San Francisco's effective current pretrial model by reassigning responsibility for pretrial assessment and supervision to criminal justice agencies that are already involved in the disproportionate incarceration and prolonged detention of marginalized individuals. SB 10 became law in August 2018 and will be implemented effective October 1, 2019.<sup>5</sup> In eliminating cash bail, SB 10 creates a new statewide infrastructure to deliver pretrial services – without taking existing successful programs into

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<sup>3</sup> *Barker v. Wingo*: "The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life ...imposing those consequences on anyone who has not yet been convicted is serious."

<sup>4</sup> Dobbie, W., Goldin, J., & Yang, C. S. (2018). The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. *American Economic Review*, 108(2), 201-240.

<sup>5</sup> Due to a referendum to repeal SB 10, the implementation start date may be halted until California residents vote on the initiative in November 2020 or a deal is reached between legislators and the referendum sponsors..

account. There is also discussion about replacing the Arnold PSA with a potentially less equitable tool or making changes to the locally designed Decision-Making Framework under SB 10, which undermines the work of the PSA Working Group.

In September 2018, SB 1054 was passed to make slight amendments to SB 10, including extending San Francisco's timeline to transition pretrial services. Under SB 1054, San Francisco has until January 1, 2023 to assure pretrial services are performed by public employees. SEIU was a key partner in developing the framework of SB 10, and SF Pretrial is willing to unionize under SEIU to meet the SB 10 funding and operating provisions and maintain our nonprofit structure.

Regardless of the SB 10 outcome, funds have already been distributed through the 2018 budget trailer bill SB 862 to plan the implementation of a pretrial framework similar to SB 10, and those funds may be significantly increased and allocated for implementation through the 2019 state legislative cycle. We are monitoring the various phases of this process and, with or without SB 10, changes to the pretrial system<sup>6</sup> and its funding still threaten SF Pretrial's existence.

On December 11, 2018, the San Francisco Board of Supervisors unanimously passed a resolution introduced by President Malia Cohen with all members signing on as co-sponsors. The resolution asserts San Francisco's authority to allow SF Pretrial to continue operating in its current form as an independent nonprofit organization and resolves that Pretrial's "operating model should reflect the principles of neutrality and structure independence from the law enforcement functions, and that the timeline for implementation reflect State funding requirements." Board members and their staff have agreed to continue working with SF Pretrial as this process continues. The decision to preserve Pretrial currently rests with the Mayor's Office. Our State Legislative Delegates have agreed to support San Francisco's decision and need the City to take a position: Should Pretrial remain as an independent agency or should pretrial services be moved into a law enforcement agency?

## **Recommendation: Maintain Independence and Neutrality**

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To maintain the integrity of our pretrial system, SF Pretrial is working with our state and elected local officials to advance a legislative or budgetary solution to SB 10. Legislation for our current cycle is due by February 22nd, so we are under a tight deadline. Even if efforts to Amend SB 10 are put on hold due to the referendum and pending ballot measure, there is language to fund pretrial services using the SB 10 defined structure in the Governor's proposed 2019-20 budget.

Specifically, we ask for your support to:

- 1) Amend SB 10 or 2019 budget legislation allocating funds for pretrial services to include language that mirrors the exception created for Santa Clara County in SB 10, which would preserve SF Pretrial as an independent, non-profit organization providing pretrial services in San Francisco with access to the same funding afforded to other qualified agencies.**

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<sup>6</sup> Currently, two constitutional challenges to California's money bail system (the Humphrey case and Buffin case) argue that the money bail system violates due process and equal protection by unlawfully detaining defendants because of their inability to pay bail. The outcome of these cases may change how pretrial detention is determined, regardless of the outcome of the SB 10 referendum.

SF Pretrial's Board and Senior Leadership are in conversations about organizing under SEIU to more closely mirror the public agency requirements under SB 10, and this option has also been presented to our staff.

These recommendations are based on the City and County of San Francisco receiving its allotted funding for pretrial services, as outlined in SB 10. Adopting this amendment ensures San Francisco continues our legacy of providing high-quality, innovative and industry-leading pretrial services.<sup>7</sup>

## **SF Pretrial: Industry-Leading, Objective, and Cost-Effective**

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The San Francisco Pretrial Diversion Project is uniquely equipped to continue providing high-quality, effective pretrial services under implementation of SB 10.

### **1) SF Pretrial Exceeds Industry Standards**

Pretrial diversion services are traditionally evaluated by measuring the rate of client court appearances and new criminal activity. We are proud to report that SF Pretrial performs as well as or better than other industry leaders – Kentucky and Washington, DC – in both regards.

Specifically, 87 percent of SF Pretrial release clients made their scheduled court appearance on a monthly basis from October 2017 - September 2018. This is consistent with Washington, DC's (90 percent) and Kentucky's appearance rate (85.2 percent).<sup>8</sup> On a quarterly basis, only 10 percent of SF Pretrial clients are arraigned on a new offense while on SF Pretrial supervision, compared to a 9 percent rate of new criminal activity in Washington, DC, and an 11 percent new criminal activity rate in Kentucky.<sup>9</sup>

### **2) SF Pretrial Reduces the San Francisco Jail Population**

In addition to meeting or exceeding industry standards in client court appearances and new criminal activity, SF Pretrial significantly reduces the county jail population. By processing more than 500 bookings per month, SF Pretrial has decreased the San Francisco jail population – a key priority of local stakeholders – by 47%.<sup>10</sup>

SF Pretrial was also one of the first sites to pilot a public safety assessment (PSA) tool in partnership with other county criminal justice stakeholders. The PSA is a scientifically validated, actuarial risk assessment designed to protect public safety and maximize court appearances. A recent evaluation concluded that use of this assessment increased the release of eligible defendants pretrial by 37 percentage points – a savings of approximately 30,000 jail bed days per month.<sup>11</sup>

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<sup>7</sup> It is important to note that we are not taking a position against the San Francisco Adult Probation Department. This paper is intended to highlight the performance and history of SF Pretrial, along with the value of our neutrality as a non-law enforcement agency. We look forward to continuing our work with the SF Adult Probation Dept. under SB10.

<sup>8</sup> Pretrial Services Agency for the District of Columbia. Performance Measures.

[https://www.psa.gov/?q=data/performance\\_measures](https://www.psa.gov/?q=data/performance_measures)

<sup>9</sup> DeMichele, M., Baumgartner, P., Wenger, M., Barrick, K., Comfort, M., & Misra, S. (2018). The Public Safety Assessment: A Re-Validation and Assessment of Predictive Utility and Differential Prediction by Race and Gender in Kentucky.

<sup>10</sup> Work Group to Re-envision the Jail Replacement Project, Final Report. 2017.

<sup>11</sup> San Francisco Chronicle: Public defender's new pretrial release program slashes SF jail stays: Study. May 15, 2018.

In San Francisco, African Americans face racial inequities at all levels of the criminal justice system and the African American community disproportionately suffers the negative outcomes of pretrial detention. Given the challenges facing our most distressed and vulnerable communities, SF Pretrial plays a critical role in providing alternatives to the overwhelmingly negative impact of incarceration; producing results that meet and exceed the highest standards across the nation.

SF Pretrial provides a human approach that balances statistics with real life. In addition to use of the PSA, our employees receive extensive training in interviewing clients and assessing risk. The PSA's recommendation does not represent a final determination, instead, we treat it like beginning of a conversation. Judges rely heavily on our assessments; so much so that they often defer to pretrial staff in the midst of a hearing.

### **3) Only SF Pretrial Provides Critical Independence and Neutrality**

The National Institute of Corrections (NIC) and National Association of Pretrial Services Agencies (NAPSA) have declared that organizational independence and neutrality are key components of a successful pretrial diversion program.<sup>12</sup> In addition, they argue that pretrial services, including risk assessment, release/detention, and supervision, should be "consolidated under a single organizational structure." This is consistent with the operational structure of SF Pretrial.

In addition, prominent criminal justice experts believe that pretrial justice is best served through the operation of an independent pretrial services agency, as opposed to housing these services within adult probation or the courts. Timothy Schnacke, a noted pretrial expert and executive director of the Center for Evidence and Legal-Based Practices, found that establishment of a freestanding pretrial services agency is the best mechanism for furthering pretrial justice. Specifically, he argues that an "ideal" pretrial services agency would "exist independently of all other criminal justice agencies, have its own mission statement and goals, and have a separate identity that is recognized for performing its critical functions much like we might recognize a prosecutor's office to independently handle all of the functions of prosecution."<sup>13</sup>

In their 2017 report, NIC advises jurisdictions to house all pretrial functions (including risk assessment, release/detention recommendation, and supervision) in a single, independent agency. Citing both organizational management concerns and the need to navigate the complex nature of pretrial functions, NIC argues that "these functions are best managed under a single entity and management mission and philosophy."<sup>14</sup> Ultimately, they advise, "pretrial services agencies should be independent, stand-alone entities, like other criminal justice agencies. This ensures the independence of operation needed to manage such essential elements as universal screening and recommendations for pretrial release or detention."<sup>15</sup>

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<sup>12</sup> National Institute of Corrections. (2017). A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency.

<sup>13</sup> Schnacke, Timothy. (2018). Pretrial Release and Probation: What is the Same and What is Different. National Association of Pretrial Services Agencies.

<sup>14</sup> National Institute of Corrections. (2017). A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency.

<sup>15</sup> Ibid.

In fact, independent pretrial services agencies have long been more effective than probation-governed programs. In her Yale Law Journal article examining implementation of the federal 1982 Pretrial Services Act, Betsy Kushlan Wanger notes that “independent agencies providing pretrial services under the 1974 Act received more favorable performance reports than did probation-run programs.” These differential outcomes were due to differences in capacity and operational philosophy, she argues: “because most probation offices are already overburdened, and because probation philosophy and practices have been developed to deal with convicted criminals, not with presumptively innocent defendants, an independent agency can better perform pretrial services.”<sup>16</sup>

Jurisdictions that house pretrial services within their existing probation systems face numerous challenges. Most fundamental, probation and pretrial services have divergent ideologies and serve dramatically different populations. Probation is a correctional sentence and form of punishment, and probation officers serve individuals who have either pled guilty to or been convicted of a crime. In contrast, pretrial release is a critical part of the fundamental right to presumption of innocence, and pretrial services officers serve defendants who have been charged – but not convicted – of a crime.

These different populations require distinctly different interventions for pretrial and probation clients. As stated in a user guide issued by the Pretrial Justice Institute (PJI) and American Probation and Parole Association (APPA): “Non-adjudicated individuals...enjoy a greater level of rights and protections than probationers. Thus, defendants cannot be forced to discuss the circumstances of a pending case nor be ordered to punitive conditions such as community service or victim restitution. Legal status conveys distinctly different purposes for pretrial and probation interventions.”<sup>17</sup>

San Francisco Public Defender Jeff Adachi underscores the importance of protecting defendants’ unique constitutional rights. In a letter to the San Francisco Mayor’s Office and Board of Supervisors on November 6, 2018, he noted: “Probation departments are charged with supervising people who have been convicted of a crime. Probation is a punishment - an alternative to prison. Probation officers are law enforcement agents with the power to arrest people. They monitor people under their control for any violation of probation, no matter how trivial, and must report all violations to the Court. Further, based on internal

***Client Spotlight:***

*Vicki had just turned 18 when our Assertive Case Management staff met her in jail. Badly beaten by her stepfather and thrown out of her house, Vickie had been picked up by the police for soliciting sex...trying to find enough money to sleep inside. She was violently assaulted by a customer, who also stole her money. After being released and coming to our office the transformational work began. She was connected with a sex work based clinic for healthcare and counseling, as well as a group for transgender youth. We worked with her to secure a bed in an LGBTQ shelter. Her new long-term case managers were eventually able to find her permanent supportive housing. With a safe space of her own, Vicki has gotten her GED and emerged as a leader in her community, working with trans youth and growing into the woman she was always meant to be.*

<sup>16</sup> Wanger, B.K.. (1987). Limiting Preventive Detention Through Conditional Release: The Unfulfilled Promise of the 1982 Pretrial Services Act. Yale Law Journal, 97, 320.

<sup>17</sup> Pretrial Justice Institute. (2010). Promising Practices in Providing Pretrial Services Functions Within Probation Agencies User’s Guide.

policies, they make recommendations to judges about when to revoke probation and impose a state prison sentence. Asking them to provide services to pretrial defendants would be setting up very troubling conflicts of interests; requiring cooperation with law enforcement pretrial violates constitutional rights to silence and counsel.”

This concern is also shared by several local criminal justice stakeholders and advocates, who are currently considering legal action against SB 10. Specifically, they are building an argument on the basis of defendants’ Fifth Amendment rights. If probation provides pretrial services, it is conceivable that defendants have the potential to incriminate themselves by revealing information relevant to an open case. Therefore, local criminal defense attorneys will instruct their clients to withhold pertinent personal information to a pretrial agency housed under probation, based on that fear. This is in direct contrast to SF Pretrial, where staff and clients carry a transparent and informed relationship to maximize the impact of services and their treatment plan.

There are also several organizational, funding, and staffing challenges associated with merging pretrial and probation systems. In a 2010 APPA focus group that surveyed jurisdictions housing pretrial services within probation departments, participants noted that probation staff and services are often perceived as “overshadowing” pretrial departments. This includes a perception from staff that probation officers are more senior than pretrial services officers and a frustration with limited training on and understanding of pretrial services in an agency geared primarily toward different outcomes.<sup>18</sup>

Funding is also a critical challenge. APPA focus group participants reported that a merged organizational structure may leave pretrial services vulnerable to budget cuts within probations budget, and vice versa. Further, morale and operational challenges are likely to occur from drastic differences in funding streams, such as raises for staff one department and not the other, etc.<sup>19</sup>

In his analysis, Schnacke paints a compelling picture of the need for “mental separation” between probation and pretrial services. As he explains, “maintaining separation is the challenge of any organization trying to perform both probation and pretrial release functions. Physical separation, while admirable, is likely secondary to mental separation, in which officers have a clear understanding of the fundamental differences between pretrial release and probation so that officer actions manifest in ways demonstrating that understanding.”<sup>20</sup>

Stakeholders have conveyed an intent to implement SB 10 through the construction of a “firewall” between pretrial services and post-conviction services within probation departments. Assessments would be conducted by civilian probation employees, with protection by the firewall. The supervision portion of SB 10, the component relying most heavily on protected client confidentiality and full disclosure, straddles that firewall and the information provided by clients under the guise of pretrial services could potentially follow them into the trial and post-conviction phases. We understand that there is room to negotiate this position, but it underscores the value of an independent agency outside the law enforcement framework.

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Schnacke, Timothy. (2018). Pretrial Release and Probation: What is the Same and What is Different. National Association of Pretrial Services Agencies.

If SF Pretrial were to be housed within the Adult Probation Department, it is unclear that detached divisions would be able to sufficiently separate each agency's role to ensure effective, high-quality provision of services. In addition, considering the presumption of innocence and the lifelong impact of being incarcerated or convicted, pretrial clients are likely more willing to engage with a non-law enforcement agency.

#### 4) **SF Pretrial Protects Public Safety**

Much attention has been paid – rightfully so – to the importance of protecting public safety during the pretrial period. SF Pretrial believes that protecting the safety and well-being of our communities is of utmost importance, which is why we rely on evidence-based determinations throughout our assessment, supervision, and case management processes.<sup>21</sup> However, it is also important to note that pretrial detention may have longer term impacts on public safety – far after an individual's immediate case is resolved.

Specifically, pretrial detention is associated with increased likelihood of re-arrest. A 2013 study analyzed over 150,000 bookings into a Kentucky county jail from July 2009 to July 2010. Researchers found that defendants detained pretrial were 1.3 times more likely to be rearrested within the next 24 months, when compared to similarly-situated defendants who had been released.<sup>22</sup> This relationship was shown to strengthen over time; the longer a defendant was detained pre-trial, the greater the likelihood of later arrest. This effect is particularly significant for low-risk defendants – even 48 hours in jail was shown to increase recidivism of low-risk or first-time offenders by almost 40 percent.<sup>23</sup>

Researcher Will Dobbie and colleagues analyzed criminal case outcomes and re-arrest patterns for 420,000 defendants in large, urban Philadelphia and Miami-Dade counties. Like research conducted in more rural court systems, they found that pretrial detention increases the likelihood of re-arrest after case disposition.<sup>24</sup>

#### 5) **SF Pretrial Can Manage San Francisco's Growing Pretrial Capacity**

<sup>21</sup> Whereas there was an incident involving an individual involved with a high profile comprehensive review by all pretrial partners determined that taking into account all data available at the time, the individual would have been released on lower supervision.

<sup>22</sup> Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). The Hidden Costs of Pretrial Detention. Laura and John Arnold Foundation.

<sup>23</sup> Ibid.

<sup>24</sup> Dobbie, W., Goldin, J., & Yang, C. S. (2018). The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. American Economic Review, 108(2), 201-240. doi:10.1257/aer.20161503

#### ***Client Spotlight:***

*Barry was one of those guys you try not to see begging for money at a freeway ramp, a big man with a deep voice and bad crack habit who kept getting arrested for returning to the same spot for more money; almost sounds like a job. Poor health, no medical coverage or food stamps, a bed under two girders with a plywood roof and a fractured finger. He was not pleasant or happy, and it took a knock on his "door" with coffee and a doughnut to build rapport. Our ACM team took him to the doctor to take care of his finger. Before he was able to sabotage the process with a fit of anger due to the frustrating maze of roadblocks involved with accessing services, our Pretrial staff took control of the interaction and advocated for his treatment. It was a critical moment of trust and suspended judgment. It wasn't overnight, but Barry completed residential treatment, got a job, reconnected with his children and was last seen driving a Cadillac.*



Use of the Arnold PSA and the result of the January 2018 Humphrey decision<sup>25</sup> has increased the number of pretrial individuals out of custody. SF Pretrial has adeptly adapted and expanded its services in response to these changes by expanding its hours of operation and scaling up staffing. SF Pretrial currently operates 365 days a year and completes over 6,500 assessments annually on individuals booked into the county jail and has seen its caseloads triple since the January 2018 Humphrey decision.

As noted previously, San Francisco made a significant investment in the PSA and SF Pretrial has been in a lead role throughout the process. SF Pretrial conducts PSA training for staff, Superior Court Judges, and other local stakeholders including the District Attorney's and Public Defender's Offices, Probation and Sheriff's Departments and the Private Defense Bar. To date, we have facilitated 15 trainings for over 150 colleagues. SF Pretrial is the local expert on San Francisco's risk assessment tool and has been steeped in the process of implementation, evaluation and operational adjustments, which clearly positions them as the most qualified agency for ongoing execution or implementation of a new instrument.

Since the implementation of the PSA in April 2016, San Francisco Pretrial Diversion Project and other local criminal justice stakeholders have been dedicated to completing regular fidelity reviews to discuss the accuracy of the PSA risk scores presented to judicial officers for release decisions. In these Fidelity Reviews, 30 randomly selected cases are re-scored by trained representatives from the Sheriff's Department, District Attorney's and Public Defender's Offices, and Probation then compared to the originally produced score. The fidelity review results have been consistently high and shown continuous improvements from the first review. In our most recent review, out of 270 risk factors reviewed, SF Pretrial's scores had discrepancies in only 2. The rate of discrepancies was reduced after SF Pretrial implemented the second look process for all PSAs in August 2017 and we, with our local criminal justice PSA stakeholders, are committed to continuing the fidelity review process in the future.

## **6) SF Pretrial Is Cost-Effective**

SF Pretrial provides high-quality assessment, supervision, and case management services at a cost of 32 percent less than comparable government agencies or probation departments.<sup>26</sup> This organizational efficiency comes primarily from SF Pretrial's significantly lower fringe benefits rate (32 percent), compared to higher benefits rates at comparable agencies and departments. SF Pretrial operates seven days a week, from 6:00 a.m. to 8:00 p.m. or longer based on partner requests and client needs. We have 54 staff and a budget of \$5.5 million, and process over 7,300 cases annually. There are 1,250 people in our Assertive Case Management program, and our community services provider network consists of over 100 agencies. Pretrial staff facilitate behavioral health workshops for an average of 110 clients weekly.

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<sup>25</sup> California's First District Court of Appeal's Humphrey decision ruled that that Superior Court judges must consider a defendant's ability to pay bail and non-monetary alternative to money bail. The case is currently under review by the California Supreme Court.

<sup>26</sup> This cost comparison was an estimate based on the salaries and benefits offered by Santa Clara Pretrial Services and the San Francisco Probation Department. For the purposes of this analysis, we assumed each agency/organization had comparable numbers of staff (at comparable levels of expertise).

In addition to the cost savings, SF Pretrial has access to funding sources that are unavailable to government agencies or departments. As a nonprofit, SF Pretrial can secure organizational funding from foundations and private donors, in addition to governmental support.

## Conclusion

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With high public safety and appearance rates, SF Pretrial has demonstrated high-quality and cost-effective pretrial services for over 43 years. While the intent behind SB 10 is certainly laudable, the legislation must be amended immediately to ensure that an industry leader is not dismantled in favor of a system that is more expensive, broadens corrections, and rejects the best-practices of pretrial services.

The City & County of San Francisco is not alone in this problem. SB 10 already provides an exemption for Santa Clara County which allows them to keep their existing structure in place. In addition, the Los Angeles County Board of Supervisors has taken a position against probation running their pretrial services. We are pursuing a legislative solution to protect the integrity of our pretrial system and maintain the neutral and independent status of SF Pretrial without compromising state funding, all of which is possible with a united position from San Francisco.

Again, we ask for your support to:

1. **Amend SB 10 or 2019 budget legislation allocating funds for pretrial services to include language that mirrors the exception created for Santa Clara County in SB 10, which would preserve SF Pretrial as an independent, non-profit organization providing pretrial services in San Francisco with access to the same funding afforded to other qualified agencies.**

We understand the option to amend SB 10 may be on hold due to the issue being placed on the 2020 ballot. Funding through a budget bill (similar to SB 862 in 2018) could still result in the elimination of our agency if it moves forward as proposed in the Governor's 2019-20 budget under the Judicial Branch. We have been in conversations with our state legislators, who have expressed willingness for a legislative fix. If the City & County can make a decision and San Francisco reaches consensus on these amendments, we hope to make changes during the upcoming legislative cycle. Given the critical nature of these amendments, it is imperative that they be formally codified in state law.

## For Additional Questions:

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If you have additional questions or are interested in supporting our position, please contact David Mauroff at [davidm@sfpreatrial.org](mailto:davidm@sfpreatrial.org) or (415) 341.4637.