

April 8, 2019

The Honorable London Breed
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Dear Mayor Breed:

The Bar Association of San Francisco (BASF) and its nearly 8,000 members write to address a critical issue in San Francisco's criminal justice system: the need for pretrial release services provided by a neutral entity that is independent from any law enforcement agency.

I. BASF Urges You to Request Legislation to Continue Financing an Independent SF Pretrial Agency

BASF understands that, unless amended, current bail reform legislation including SB 10 will require that S.F. Pretrial Diversion Project (SF Pretrial) be consolidated with the Adult Probation Department. BASF believes that SF Pretrial's identity as an independent and neutral agency—without any law enforcement function—is important to advancing its mission. Consolidating SF Pretrial with the Probation Department could place at risk the current system that strongly favors pretrial release of vetted defendants, and thereby increase the jail count. Moreover, from an administrative perspective, SF Pretrial runs an efficient operation and consolidation with the Probation Department would likely increase, rather than decrease, costs. Although the proposal to consolidate may make sense for some counties, San Francisco's system for pretrial release and diversion already works well, and has for many years.

BASF therefore urges you to follow Santa Clara County's example in requesting that our state assembly representatives propose amendments to SB 10 that permit SF Pretrial to receive state funding as an independent pretrial services agency without requiring the entity to be consolidated with the Probation Department.

II. The Important Role of SF Pretrial in San Francisco's Model System

SF Pretrial provides risk assessments, supervision, and programming for thousands of defendants in pretrial criminal proceedings before the Superior Court. SF Pretrial is also playing an important role in piloting the implementation and critical examination of Public Safety Assessment (PSA) tools, technology used to screen defendants for safety and flight risks. The volume and scope of SF Pretrial's work is substantial: its staffers screen well over 500 new defendants per month for a total of 7,000-8,000 cases per year. SF Pretrial also provides intensive supervision for approximately 330 defendants and case management for the remaining roughly 900 defendants on monitoring or own recognizance release. The role and workload of SF Pretrial is expanding as a result of statewide and local developments in bail practices, including the *In re Humphrey* and *Buffin* litigation.

Whether a defendant is granted pretrial release or detained is one of the most important determinations made in every criminal case. Detention determinations profoundly impact San

Franciscans' lives and cases. Important values are at stake with this decision, as well. Constitutional law and sound policy strongly favors pretrial release. Defendants are, of course, presumed innocent and generally entitled to their liberty unless no set of conditions can adequately mitigate the risk of flight or danger to the community. Pretrial services agencies like SF Pretrial are designed to carry out these important legal policies that favor of release.

III. Consolidation of SF Pretrial with Probation Would Jeopardize Important Legal Values, Our Local System Favoring Release, as well as Ongoing Reforms

Probation and Pretrial Serve Incompatible Missions. The Adult Probation Department's mission is fundamentally different from SF Pretrial's. It administers *punishment* to convicted criminals in the form of probation (an alternative to custody). For example, it requests and serves warrants, and recommends jail time for probation violations. By contrast, pretrial services agencies must establish trust with defendants to advance both the policy and the success of pretrial release. If defendants—or their counsel—suspect that information provided to pretrial services officers in the course of seeking pretrial release could be used against them by law enforcement agencies, they may refuse to cooperate. For communities of color, the issue of trust is particularly important, and for these reason, BASF strongly recommends maintaining SF Pretrial's independence from law enforcement.

Our Local Culture is Healthy. BASF is also very concerned that moving SF Pretrial to the Probation Department could disrupt a local system and culture that is in model health. Release rates vary remarkably across jurisdictions as a result of local practices, institutions, and attitudes, even though the law itself is uniform across the state. This suggests that local institutions, practices, and attitudes, matter. Over many years, SF Pretrial has played a key role in ensuring that San Francisco's release rates—which approach 90%—are comparable to other model jurisdictions, such as Washington, D.C. BASF urges you to protect SF Pretrial's independence to preserve this successful system.

Firewalls are Risky and Unworkable. Proponents of consolidation argue that the various concerns set forth above can be adequately addressed by imposing firewalls and structural separation within the Probation Department such that pretrial records are not available for probation purposes, and personnel are not split between functions. Imposing such controls, however, is complex and risky. Currently, there is no coherent proposal or plan for satisfactorily implementing an inviolate separation of functions. Overall, this proposed solution raises far more questions and concerns than it resolves and does not appear to be desirable or workable.

PSA Tools and Ongoing Reforms. Looking to the future, BASF believes that the local steward of San Francisco's risk assessment tool should be an independent, neutral agency that is dedicated to achieving transparency and fairness through the use of technology. Consolidating SF Pretrial into the Adult Probation Department could jeopardize the work SF Pretrial has already performed vetting and implementing the Arnold PSA tool with the help of other criminal justice agencies and the California Policy Lab.

Efficiency Favors Independence. Finally, it appears to be undisputed that moving pretrial services to a city agency would increase costs. Although the state should continue to provide

funding, it appears that administrative efficiency also counsels in favor of maintaining SF Pretrial as an independent non-profit.

IV. Conclusion: Please Support an Independent, Neutral SF Pretrial Agency

For all these reasons, the benefits of preserving SF Pretrial's status as a neutral and independent non-profit agency far outweigh the advantages, if any, of consolidating SF Pretrial with Adult Probation. We urge you to follow Santa Clara's example in requesting that our state assembly representatives propose amendments to SB 10 that would permit SF Pretrial to receive state funding as an independent pretrial services agency without requiring consolidation with the Probation Department.

Respectfully Submitted,

Doris Cheng
President, Bar Association of San Francisco

Cc: Hon. Teri L. Jackson, San Francisco Superior Court
Hon. Ross C. Moody, San Francisco Superior Court
Manohar Raju, San Francisco Public Defender
George Gascón, San Francisco District Attorney
Vicki Hennessy, San Francisco Sheriff
Naomi Kelly, San Francisco City Administrator