



Sacramento County **Misguiding Public in** **Push for New Jail Facility**



Interrogating the Data and Arguments
November 2022

DEDICATION

This report is dedicated to the tens of thousands of people who should have been met with care and healing instead of punishment; the families who have been put in desperate positions because our county lacks appropriate response to cries for help, to the survivors whose intrusive pain requires acknowledgement and healing of body, mind, and spirit. We embrace atonement, reconciliation and restoration as the only path that will prevent more harm. We stand with the people in certain neighborhoods who disproportionately experience interactions with law enforcement; and finally, to all who have been impacted by our lack of innovation and disinvestments while we instead continue to use mass incarceration, including e-incarceration, and the related inhumane treatment in our jails and county services as a solution while undermining public health and health equity.

NATIONAL EXPERTS TEACH US

"The notion that a vast gulf exists between "criminals" and those of us who have never served time in prison is a fiction created by the racial ideology that birthed mass incarceration, namely that there is something fundamentally wrong and morally inferior about "them." The reality, though, is that all of us have done wrong. As noted earlier, studies suggest that most Americans violate drug laws in their lifetime. Indeed, most of us break the law not once but repeatedly throughout our lives. Yet only some of us will be arrested, charged, convicted of a crime, branded a criminal or a felon, and ushered into a permanent undercaste. Who becomes a social pariah and excommunicated from civil society and who trots off to college bears scant relationship to the morality of the crimes committed. Who is more blameworthy: the young black kid who hustles on the street corner, selling weed to help his momma pay rent? Or the college kid who deals drugs out of his dorm room so that he'll have cash to finance his spring break? Who should we fear? The kid in the 'hood who joined a gang and now carries a gun for security, because his neighborhood is frightening and unsafe? Or the suburban high school student who has a drinking problem but keeps getting behind the wheel? Our racially biased system of mass incarceration exploits the fact that all people break the law and make mistakes at various points in their lives with varying degrees of justification. Screwing up-failing to live by one's highest ideals and values-is part of what makes us human."

— Michelle Alexander, Attorney, Educator, and Author

"Today, it is predicted that nationwide one in three black males and one in six Hispanic males will be incarcerated in their lifetime. We have come to accept this as natural. But why doesn't our discipleship inspire us to interrogate this belief?"

— Dominique DuBois Gilliard, Pastor, Author

"We have a choice. We can embrace our humanness, which means embracing our broken natures and the compassion that remains our best hope for healing. Or we can deny our brokenness, forswear compassion, and, as a result, deny our own humanity."

— Bryan Stevenson, Attorney, Educator, and Author



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Author Statement

We write this report to help the public and our elected leaders better understand the core issues in the county's upcoming decision about whether to expand the jail facilities. **Specifically, the issues are not as they are being portrayed by some Sacramento County staff. Nor are they fully analyzing the core issues, leading to an incorrect decision to expand the jail.**

Our quarrel is not with individual staff. County staff are capable, accomplished professionals who believe their chosen solution is in the best interests of the county. Our concern is with a culture that allows a decision-making process predisposed to accept the one-sided case laid out by some staff, while excluding rational and unbiased data and analyses. Based on available evidence, the predictable result of the current decision process, if it is allowed to stand, is that the jail expansion will be a massive failure and impose huge financial, health and public safety costs for an entire generation, like the current Main Jail.

Consistent with our evidence-based advocacy over the last three years, we urge our county executives and Board to offer a stepwise, public analysis addressing each of the violations documented in the [Mays v. Sacramento County federal consent decree \(Mays\)](#) and explain how they determined that the proposed facility is an appropriate solution to a given violation. From this analysis it would be clear that **the majority of the severe civil rights violations at issue in Mays regard underlying conditions that can and should be remediated without a new facility.** These include preventable overpopulation of the jails and the culture of cruel and inhumane treatment saturating the institution. Over several years of discussions before and after the court settlement, the county has yet to meaningfully address these well-documented underlying conditions. To keep focusing on an expensive new facility while continuing to tolerate a climate of inhumanity in the jails is a losing proposition.

Instead of a stepwise public analysis, county staff conducted a Board workshop on September 14 to present their case for a new facility. There was no opportunity for community members to ask questions of the speakers or engage in interactive discussions. Considering the massive social and financial costs, the public deserves an open, evidence-based analysis to support the staff's hypothesis that a jail expansion will be effective in protecting human rights, public safety, and county financial sustainability. In short, **prove it.**

In the meantime, we challenge the public and the Board to read and analyze the relevant reports linked at the end of this analysis. We firmly believe that the narrative being fed to you is at odds with the county's own commissioned reports and, more to the point, contrary to a sustainable, long-term solution to the vast majority of problems at issue in *Mays*.

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Executive Summary

#1 Sacramento County Staff are cherry-picking facts. County executive staff are determined to make the case for a new jail facility, regardless of inconvenient facts. They are selectively sharing and withholding information from colleagues, the Board of Supervisors, and the public to craft a false narrative: that a new jail facility is the only way to resolve the problems exposed in *Mays*.

The staff's commitment to gaining approval for a new jail facility is longstanding. This is their third proposal and their fourth attempt to gain approval in three years. Meanwhile, they continue to resist reasonable, evidence-based alternatives to incarceration and to close off options that previously helped reduce the jail population.

The staff's history of prioritizing law enforcement special interests while ignoring effective alternatives is equally enduring. Staff's actions go against clear guidance from the Board to implement common-sense jail reforms that can take effect much sooner at far lower cost, as recommended in the initial *Mays* subject matter expert reports, the continuing monitoring reports, and numerous other studies linked at the end of this document. Staff's push for jail augmentation also goes against the current public safety literature that makes it plain: the punitive approach the county has pursued for decades does not reduce crime or enhance public safety. This is borne out by voluminous studies, noted even in a report commissioned by the county this year.

Nonetheless, staff appear to have concluded they just need to try harder to "sell" the idea that a new facility is the solution to the county's jail crisis.

#2 In making their case, Sacramento County staff have not provided Supervisors with the information needed to make a fully informed decision. Core principles of decision-making for public safety (as for public health and other policy areas) requires a clear problem definition, consideration of goals and values, a theory of action (how proposed solutions address identified problems), alternative solutions, cost-benefit analyses, and likely unintended consequences (risk assessment). The information provided to the Board to date meets none of these basic standards.

The county is under pressure to approve a remediation plan for Mays violations, having already missed an October 2022 court deadline. But a hasty decision based on incomplete and misguided information will make matters worse for the county in the long run, landing Sacramento back in court with costly extensions of the consent decree and additional lawsuits for years to come. A premature decision would also compound the harms experienced by the community under the current carceral environment. **Instead of doing the most convenient thing—accepting the staff's jail expansion proposal—the Board of Supervisors should do the right thing for Sacramento—negotiate with Mays plaintiffs' counsel and the court to allow time to develop a depopulation plan with appropriate infrastructure—a humane, sustainable decision for all parties.**

#3 Focusing on jail construction instead of jail population reduction is a fool's errand. A new jail will not address the majority of *Mays* complaints. This fact has been indisputably established by numerous experts in references provided. Equally evident is that failing to address the underlying issues that led to the federal lawsuit—preventable overpopulation and a culture of inhumanity—will ensure that the problems at issue in the lawsuit will be replicated in any new facility. Also evident is

that planning a new facility before taking all possible steps to safely reduce the jail population just doesn't make sense. **Without knowing the success of population reduction efforts, the county has no basis on which to decide how to address facility-related issues in *Mays*.** Many of the issues are inextricably linked with overcrowding and would be mitigated by significant population reductions. And perhaps most problematic, the county has no control over what goes on inside the jails. The jail is an extension of the independently elected sheriff and the only remedies that can be implemented in the jails are those that the sheriff voluntarily accepts.

Based on all the above, this report provides actionable recommendations to the Board of Supervisors. We recommend looking at **all** the available facts, including those that conflict with the staff's position, and we provide references and synopses to assist with this review. We recommend following best practices for public policy decision making, including demanding a higher standard of evidence for high stakes proposals, as described in more detail below. We advise that Board resolutions be taken seriously and that racism as a public health crisis be centered in the analyses. We recommend implementing evidence-based practices that truly restore equity and protect public safety and public health.

Context

Sacramento County is under a federal consent decree to improve jail conditions. The consent decree stems from a class action lawsuit about two main categories of issues: (1) cruel and inhumane treatment and (2) violations of federal and state disability laws. (See sidebar on next page for summary of the *Mays* case and the resulting consent decree.) Expert monitors appointed by the federal court track the county's progress in meeting the requirements of the settlement in five areas: medical care, mental health care, suicide prevention, the Americans with Disabilities Act (ADA), and medical privacy laws. In their reports, the court-appointed monitors also recommend solutions to address documented violations. Each of the 11 [reports](#) submitted to date shows continued, serious civil rights violations in the jails.

On September 14, county staff presented a Board of Supervisors workshop outlining progress and areas needing further work on the county's commitments under the consent decree.

Staff presented the results of two studies commissioned by the county, the [Main Jail Capacity Report](#) by Nacht and Lewis, the firm that constructed the main jail; and the [Sacramento Jail Study](#) by Kevin O'Connell examining reasonable jail population reduction strategies. The previous month, County Counsel made similar presentations to the county's Community Corrections Partnership and Community Review Commission. In all three presentations, staff cherry-picked facts from these reports, sharing only those that appear to support the case for a new jail and omitting many other key facts and community expert proposed solutions that instead make a very strong case for reforms that yield better results in much less time at far less cost.

On December 7 the Board of Supervisors will be deciding whether to build an additional jail facility as a solution to the federal consent decree demands. The public is urged to [voice your opinion](#) during the December 7 hearing.

[Click here to contact your Supervisor and offer your comments in advance.](#)

#1 Sacramento County Staff Cherry-Picking Facts

Counsel's presentations have been misleading. As noted, County staff have recently made presentations to the Community Corrections Partnership, the Community Review Commission, and most recently, the Board of Supervisors in a September 14 workshop. The staff presentation appears designed to convey, falsely, that the county cannot possibly comply with the consent decree in the current facilities, thereby making the case for an expensive new facility. (Though the details and costs of the current proposal have not been revealed, the previous proposal was expected to generate over 1 billion dollars in additional long term county costs.)

To make their case, staff have been cherry-picking facts, sharing only those that appear to support the case for a new jail and omitting many other key facts and community expert proposed solutions that instead make a very strong case for reforms that yield better results in much less time at far less cost. Most egregiously, Counsel seeks to convey that complying with *Mays* requires new physical facilities. This is contrary to the language of the consent decree which plainly states that it does not call for a new facility, and it is inconsistent with the multiple subject matter expert reports¹

Reports were designed to exclude important options. In addition to selectively sharing data *from* the recent reports, county staff picked their own data parameters to go *into* the reports. The staff designed the scopes of these studies to best match their chosen narrative. For the Nacht and Lewis *Main Jail Capacity Report*, the commissioned scope did not include looking at the county's jail facilities as a whole. The report considered only the main jail, and not the Rio Cosumnes Correctional Center which also could accommodate some of the needs identified in the lawsuit. In addition, the question posed to the consultants was "What level of the jail's population would need to be removed in order to use the existing areas of the Main Jail **without renovation** to meet the objectives of the consent decree?" (Emphasis added.) In this way, the county

Mays Consent Decree

On June 20, 2019, Sacramento County reached a settlement in a class action lawsuit, *Mays v. County of Sacramento*, E.D. Cal. No. 2:18-cv-02081-TLN-KJN (PC). The settlement resulted from extensive negotiations over more than four years.

The lawsuit alleged that Sacramento County fails to provide constitutionally required mental health and medical care to people in the jail, imposes harsh and extreme solitary confinement conditions that disproportionately affect people with mental illness, and discriminates against people with disabilities.

The settlement calls for the County to end the dangerous use of 'Total Separation' for people in jail and to significantly reduce the use of solitary confinement. It requires the county to expand program activities and mental health programs and services and take additional measures to prevent suicide. It commits the County to consider measures to reduce the jail population and to prevent the unnecessary incarceration of individuals with serious mental illness. Under the settlement, the County has agreed that a "reduction in the jail population is a cost-effective means to achieve constitutional and statutory standards."

According to one of the original (now former) plaintiffs' counsel, Tifanei Ressler-Moyer, "Ultimately, the County must reduce the jail population in order to end the conditions that lead to needless deterioration of the mental and physical health of people in the jail. The County will fail to meet the needs of people in Sacramento if it simply pours money into the jail. It must invest in community services and programs designed to prevent recidivism and reduce the need to incarcerate people who are homeless or have serious mental illness."

¹ See county's [Carey Group](#) and [Rand](#) Reports, [Mays' Monitoring Reports](#), [O'Connell Jail Study](#), and other public reporting.

excluded potential solutions involving renovation (in either jail facility) to comply with the ADA and privacy laws, on the (unsubstantiated) assumption that renovations would not be feasible.

For the O’Connell *Sacramento County Jail Study*, the scope omits programs that are designed to offer people alternative-to-incarceration interventions or meet behavioral health needs. These services have proven effective at reducing crime but are complex to analyze, so they were not included—a **very big omission if the county’s goal is to understand the true potential for jail population reduction**. The researcher also lacked access to the full criminal record and other information relating to human service needs, which would be needed to fully understand the range and viability of alternative policy options.

The table below highlights a small sample of Counsel’s strategic choices in presenting information.

Figure 1. Examples of County Staff’s Selective Use of Facts

County staff presented <i>this</i> but neglected to mention <i>this</i> .
<p>New reports commissioned by the county say we need to reduce population by 1,000 in Main Jail (Nacht and Lewis) to meet most of the requirements of the consent decree. Reasonable measures could safely reduce population by 600 systemwide (O’Connell). This leaves a gap of 400 (average daily population).</p> <p><i>(Note: Though the county received these reports in March and May 2022, respectively, they did not post them publicly until September, limiting the ability of the Board of Supervisors and the public to scrutinize them prior to the September 14 Board workshop.)</i></p>	<ul style="list-style-type: none"> • Nacht and Lewis designed and built the current main jail. Being in the construction industry, N&L is biased towards new jail construction, whether or not the firm directly or indirectly participates in construction of this particular proposed annex. The contracted scope explicitly excludes consideration of renovations to address ADA and privacy violations. • O’Connell stipulated that due to the scope of his report, as determined by the county, he excludes a number of solutions the county could employ. Moreover, O’Connell noted that he takes a very conservative approach to estimating population reductions that would result from recommended measures. Why did the county limit the scope in such a way as to eliminate potential solutions? • O’Connell recommends system changes that could improve the effectiveness of the county’s criminal justice efforts, including practice and policy changes that can be implemented quickly with modest investments and will generate jail population reductions in the near term. (See examples in Figure 2 below.) • O’Connell confirms what the overwhelming body of evidence shows: that jails are among the costliest interventions a community can make, without good evidence of a crime deterrence effect and with some evidence of an opposite effect. • A stark illustration of the ineffectiveness of Sacramento’s jails is O’Connell’s finding that nearly 70% of the jail population is made up of people who have been in before, with nearly 500 who have been admitted to the jail more than 10 times since 2016. Just addressing the needs of these 500 individuals could significantly reduce the average daily population.
<p>Staffing shortages have impeded the county’s ability to implement the remedial plans that are part of the consent decree.</p>	<ul style="list-style-type: none"> • The <i>Mays</i> remedial plans call for an increase in custodial and health care staff and explicitly state that if the county is not meeting the remedial plans due to staffing deficiencies, the parties will meet and confer regarding steps to take to reduce the jail population. This has not occurred.

County staff presented <i>this</i> but neglected to mention <i>this</i> .
We can't fully implement the remedial plans in the current facilities.	<ul style="list-style-type: none"> • <i>Mays</i> does not call for a new facility. As noted in a recent letter from plaintiffs' counsel to the Board of Supervisors, "while remediation of physical plant deficiencies is essential, the <i>Mays</i> Consent Decree does not require the County to build additional jail beds or engage in any particular form of construction. ...The court-appointed neutral experts and class counsel have repeatedly called for jail population reduction, ...Significant and sensible reduction of the jail population is a critical step toward compliance with the Consent Decree and resolution of the <i>Mays</i> litigation."²
The monitoring reports have consistently found noncompliance with the remedial plans. ³	<ul style="list-style-type: none"> • In addition to documenting noncompliance, the neutral court-appointed experts who monitor progress have regularly recommended actionable solutions that don't involve constructing a new facility. As one example, a 2021 mental health expert's report suggests moving inpatient mental health to a different unit or pod, or if that's not possible, then contracting these services out to community providers.⁴
The population in the jails has changed due to the state's public safety realignment (2011). Inmates are now older and more violent.	<ul style="list-style-type: none"> • Realignment predated the consent decree by several years. Counsel's statement is false. This is not a new change. • Moreover, 83% of the jail population consists of people held before trial, meaning that they have not been proven guilty of any crime. Nearly two-thirds of the population has been diagnosed with a mental illness. Most of these people languish in jail for many months or years, even though they are presumed innocent under our laws and constitution. 40% of people entering the jail are there for arrests related to breaking rules related to their release instead of allegedly committing new crimes (60%). In other words, close to half of the population at any given time is made up of individuals brought into custody for failure to appear in court, failing their terms of probation, or other conduct based upon rules imposed only because they are in the criminal justice system.⁵ Effective, evidence-based alternatives exist for each of these categories of currently incarcerated individuals.

- In each of the examples above, County Counsel presented limited information to argue that new construction is necessary to meet the county's obligations under the *Mays* consent decree.
- In each example, County Counsel omitted information that could lead to the contrary conclusion.
- Most importantly, in each example County Counsel's unsupported assertions are contradicted by specific, research-based findings and recommendations that could save the county billions of dollars in the long term.
- In the short term, counsel omits the most obvious remedy that will create more humane conditions: reduce the jail population. **Fewer than 20% of the people inside are convicted of a crime.**
- None of the analyses look at impacts to local economies, small businesses, or on disinvested communities.

² [22.09.01 Class Counsel Ltr to BoS re Mays Consent Decree.pdf \(disabilityrightsca.org\)](#)

³ See Consent Decree Monitoring Reports at [Mays v. County of Sacramento | Disability Rights California](#)

⁴ [\[149-2\] Exhibit B - Second Monitoring Report - Mental Health Care \(Perrien\), 2021-10-04.pdf \(disabilityrightsca.org\)](#)

⁵ O'Connell Sacramento Jail Study p.16-17.

County Counsel did not discuss racial inequity despite this being another obvious injustice, and despite the Board's public declaration of racism as a public health crisis in Sacramento. Almost 40% of the people inside are Black compared with less than 11% of the county's population identifying as Black.

Figure 2. Examples of Justice Policy Recommendations in O'Connell Sacramento Jail Study

The Jail Study highlighted practice and policy changes that can be quickly implemented with modest investments and will generate near term reductions in jail population. The recommendations are based on O'Connell's analysis of the Sacramento jail population, as well as partnerships that could yield future reductions. Although we agree with the pre-sentence part of the scenario (the first three points below), the devil is always in the details. Not all services are equal. Any service that prioritizes law enforcement (probation is law enforcement) instead of health is guaranteed an outcome that will grow our already financially draining punishment system—in jail or by e-carceration (electronic monitoring and surveillance)—and undermine public safety.

- Broaden data analysis to better understand, for example, how jail interventions and community-based services overlap and how they can best work together to reduce need for incarceration.
- Develop a playbook for people released from custody that reflects the released person's needs, so that a plan could be put in motion at booking, especially for mental health, substance abuse, and housing needs where stabilization at release is imperative.
- Put in place the processes and systems the county will need in order to benefit from CalAIM, which will provide funding next year for services including up to 90 days pre-release and an extensive range of post-release services including warm handoffs and intensive case management (enhanced care management). **“New initiatives by the state will change the face of healthcare and community stabilization after release from jail, but only if the county reimagines how it shares information and plans for discharge at booking.”** (61)

As the O'Connell Study suggests:

- Increase connections between jail reentry services and community options.
- Form a cross-agency team to formalize coordination of assessments and screenings.
- Increase use of evidence-based information that is well vetted and readily, publicly available.
- Create a shared lens for decision-making across justice programs that considers impacts on the jail, race equity, behavioral health, and community disinvestments.
- Use the county's Sequential Intercept Model to collaboratively identify gaps and drive priorities involving justice and mental health.

The figure above shows recommended changes in policy from the O'Connell report. **None of these changes requires facility construction.** These recommendations complement the long list of policy, practice and culture changes recommended by subject matter experts in the reports linked at the end of this report.

Why Are Staff Doing This?

Frankly, we're befuddled. We cannot understand why highly capable and accomplished personnel who seemingly have the best of intentions are stuck on a solution that is proven to fail. Only one report of dozens analyzing problems and solutions related to the jails suggests augmenting the jail is a reasonable remedy. That report was prepared by Nacht and Lewis, the original builder of the main jail that continues to be an active player in the jail construction industry. Although the Board of Supervisors recused Nacht and Lewis from bidding on a jail augmentation, the county—whose leaders have repeatedly demonstrated their commitment to get a new facility approved—paid the firm \$250,000 for the report.

It's possible that county staff are limited by an outdated understanding of public safety research and best practices. The punitive, lock 'em up approach was the accepted standard some decades ago, but has been replaced by a marked shift away from incarceration and toward addressing the root causes of health and behavior and providing services and support based in the community.

It's possible they are responding to public fears that letting people out of jail will result in more violent crime. These fears have been fanned by sensational media accounts and by those who stand to benefit, politically or financially, from a “tough on crime” narrative. But the evidence shows this narrative is false—*less incarceration does not equal more crime*. A recent analysis compares crime trends during District Attorney Anne-Marie Schubert's conservative prosecutorial term in office (2014-present) with those of San Francisco's progressive prosecutors (George Gascón and Chesa Boudin) during the same time—a key period in California's criminal justice reform era. **If talking “tough on crime” and incarcerating more people actually reduced crime, we would expect to see a much bigger decline in crime and a lower crime rate in Sacramento than in San Francisco. In fact, the opposite is the case.**

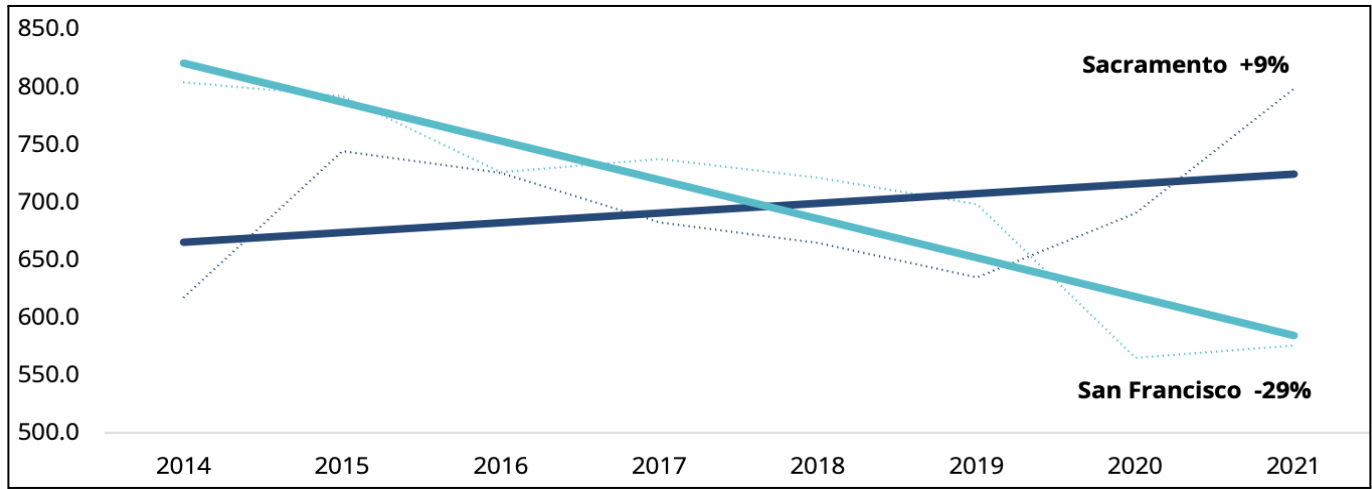
San Francisco has sustained larger crime declines and achieved lower rates of violent crime than the City of Sacramento since 2014:

- Sacramento's population is 2X the size of San Francisco's
- Yet Sacramento's jail population is 7X greater than SF's
- Our unhoused population is larger than San Francisco's
- Locking people up for being poor or mentally unhealthy is hurting the region's quality of life.

- As shown in Figure 3, violent crime rates dropped precipitously in San Francisco during this time, while these rates crept steadily upward in Sacramento.
- While Sacramento had lower violence rates before DA Schubert's term, rates have risen 9 percent on average, surpassing San Francisco's.
- Today, Sacramento has higher rates of violent crime, including for homicide, rape, and aggravated assault, while San Francisco's violent crime rate has plunged to record-low levels.
- During the same time, San Francisco reduced its incarceration rate by 38% compared to 24% in Sacramento.

- Sacramento County's heavy reliance on imprisonment cost California taxpayers \$151.6 million, while San Francisco's progressive approach saved the state \$163.3 million."⁶

Figure 3. Violent crime rates (homicide, rape, robbery, assault) per 100,000 population, 2014-2021



It's possible that staff members share an institutional bias toward continuity and department preservation and against change, toward the familiar law enforcement and punitive approach, despite its problems, over the unfamiliar. This bias could be especially strong against the types of systemic change demanded by an open and honest interrogation of the research.

By not integrating new knowledge and by failing to apply public and community health best practices to creative problem-solving, key staff are guiding the county toward solutions that perpetuate the existing, counterproductive approach to public safety—the same approach that landed Sacramento in its current legal problems. Unfortunately, the county's elected leaders are at an information disadvantage, relying on the professional staff for analysis. Though it is difficult to pinpoint the exact reasons for the staff's stubborn commitment to jail construction, the pattern is clear. County staff have long pushed for a new jail facility and have resisted and minimized effective alternatives and preventions to incarceration.

The pace of legislative change that clearly shifts toward a care model and away from punishment is resisted by county decision-makers. Changes in legislation since 2011 with AB 109 has challenged the county to rethink its structure. The strategy to change a structure that employs ~12,000 employees requires legislative knowledge specialists, innovative thinkers and change management experts who work collaboratively. New laws such as the recently signed AB 2167-Alternative to Incarceration, that now requires counties to redirect public safety practices that are ineffective and costly, require county leaders to pivot ideologies away from comfortable practice. Now, "It is the intent of the Legislature that the disposition of any criminal case use the least restrictive means available."

⁶ Center on Juvenile and Criminal Justice; Mike Males, Ph.D., Senior Research Fellow; p.1. ["Tough Talking" Sacramento District Attorney Presides Over Homicide and Violence Surge While "Liberal" San Francisco Enjoys Major Decreases \(cjcj.org\)](#)

County Staff Leaders Have a Longstanding Agenda to Build a New Locked Facility . . .

Law Enforcement and correctional officials have often deflected responsibility for human rights and public safety violations by placing the blame on existing facilities. For any number of jail conditions complaints, the majority of which have nothing to do with the facility itself, they return to the refrain that a new facility would solve the problems.

One example from the most recent Monitoring Report, illustrating how policy, practice, and staff behavior—not facilities—are the problem: “In one case, a patient reported drinking a gallon of hard liquor daily for two years but was not started on treatment for alcohol withdrawal. Nurses did not conduct an alcohol withdrawal assessment of the patient in booking and approximately 30 hours later the patient had a seizure and died.”⁷

In just the last three years, staff has brought two separate proposals for jail construction and are preparing to unveil a third proposal for a vote on December 7, 2022. They cite outdated facilities, newer federal requirements such as the ADA, legal actions such as the *Mays* Consent Decree, and other factors in support of their case, **never fully addressing how an expansion or replacement would actually solve the myriad problems arising out of the current policies, budget allocations, practices, and organizational culture of the county’s carceral system.**

To be clear, a small, and important subset of the issues in the *Mays* case involve inadequate facilities and cannot be fully addressed in the current facility. However, **three important reasons exist to address non-facility issues first and foremost:**

1. The non-facility issues are far more cost-effective and address a much greater proportion of the complaints. The county would get significantly more bang for its buck by tackling these issues first.
2. The non-facility issues, including policies, practices, and staff culture, as well as investing in upstream solutions such as existing mental health programs such as EMPOWER (Public Defender), Mental Health Diversion (Public Defender and Behavioral Health) and trauma-informed residential substance use (Substance Use Prevention and Treatment Services—SUPT), other upstream solutions such as mental health and addiction treatment and permanent supportive housing, are necessary precursors to any facility-related solutions. This is because without fixing these systems, the county would simply be transporting the root causes of the *Mays* complaints into an expensive new facility without solving the sources of the problems that led to *Mays*.
3. Before implementing population reduction strategies, the county has no way to know the size and scope of the remaining facility issues. Eliminating overcrowding would mitigate and in some cases eliminate identified facility deficiencies and would make possible different uses of space within the existing facilities.

⁷ [Third Medical Care Expert Report \(LaMarre/Saylor\) – 10/25/22 \(pdf\)](#)

For these reasons, the staff’s construction-first approach is misguided and would not result in long-term compliance with the federal consent decree, despite the likelihood of plaintiff’s counsel’s acceptance of this remediation. As former plaintiff’s counsel testified at the March 10, 2021 Board Workshop, **“Class actions lawsuits regarding conditions of confinement are designed to identify the bare minimum legal requirements of the government.”**⁸ This is the standard plaintiff’s counsel is required to use when determining whether to accept the county’s remediation plan. It is intended to fix a current, identified violation, not direct a long-term solution. Should Sacramento County move forward with this current plan, the county will most certainly become a long-term target for future class action lawsuits.

... And an Equally Long History of Ignoring Effective Alternatives

Staff leaders have repeatedly prioritized law enforcement funding and labor while ignoring effective alternatives at the expense of human restoration and human life. They fail—or refuse—to recognize the nexus between public health and public safety, and holistic approaches that actually result in a higher quality of life for all residents.

Public safety experts now realize that incarceration is unambiguously a failed strategy for reducing recidivism or keeping the public safe. Study after study shows that locking people up has no effect on crime recurrence, or slightly increases it when compared with the effects of noncustodial sanctions. McConnell’s Jail Study, commissioned by the county, confirms that **“there is limited evidence of the deterrent effect of incarceration alone, and if anything, the criminogenic impacts of incarceration grow with every hour and day in custody.”** According to a recent meta-analysis of 116 highly regarded studies, this is considered a “criminologic fact”—all sophisticated assessments of the research have independently reached the same conclusion.⁹ Incarceration cannot be justified based on deterrence. Drawing on their extensive research, the study’s authors make an important observation with implications for the county’s current decision: “the effects of custodial settings will continue to produce the same outcome unless the system is fundamentally changed.”

AB 109, California’s state carceral realignment stemming from a federal lawsuit very much like Sacramento County’s *Mays v. County of Sacramento*, set the local stage for what was supposed to be a direct challenge to mass incarceration as a remedy to injustice.

Yet county officials continue to recommend solutions that expand Sacramento’s law enforcement and carceral footprint at the expense of effective solutions empirically shown to protect public safety—investments in public health, housing, human services, violence prevention, and community restoration. Investments that could meet the impending demands of *Mays*, reduce recidivism, reduce racial and economic disparities, and lead to better long-term public health and safety outcomes. **The cost of the county’s failed approach can be measured in lives needlessly lost inside the jails and outside in the community.**

⁸ Sacramento County Board of Supervisors 3/10/2021 Workshop; 3:17:40-3:20:25; Media: [Sacramento County Board of Supervisors Meetings \(saccounty.gov\)](https://saccounty.gov)

⁹ DM Petrich, T Pratt, CL Johnson, F Cullen (2021). Custodial sanctions and reoffending: A meta-analytic review. *Crime and Justice*, 50(1), 353-424. <https://doi.org/10.1086/715100>.

See also, [Study Finds Increased Incarceration Has Marginal to Zero Impact on Crime. The Prison Paradox \(vera.org\)](https://vera.org)

Still No Comprehensive Strategy for Reducing Jail Population. Asked at a recent Community Review Commission meeting about various methods to reduce the jail population, as detailed in the recent Sacramento County Jail Study by Kevin O’Connell, County Counsel replied that the county had “not gotten to” looking at what programs they might implement—despite having agreed in the *Mays* settlement that population reduction is a cost-effective means to comply with constitutional and other legal requirements at issue in the case, and agreed more than three years ago to consider methods to do so.

To the credit of the Deputy County Executive, Public Safety and Justice, we now have the county’s [Jail Population Reduction Plans](#) that lists possible programs and approaches. This document, just released in late October, is a welcome first step and creates a comprehensive list of current and aspirational efforts. However, it remains a long way from a true proposal that shows effective metrics and data demonstrating efficacy while comparing costs.

Not Taking “No” for an Answer

The Board has acted appropriately and in the best interests of the public three times in three years to reject staff recommendations on jail facilities. It declined to expand the Rio Cosumnes Correctional Center at its November 5, 2019 meeting and reaffirmed this decision the following year on September 1. The Board rejected the recommendation for a new, main jail annex on March 10, 2021. On all three occasions, Board members heard testimony from professional and lived-experience experts about the need for the county to change policies, practices, and the staff culture and behavior at the jails, and to invest in non-carceral, upstream, preventive solutions. With support from the health equity community, the Board saw through the biased staff presentations and turned back each attempt. But county staff members don’t seem to take “NO” for an answer.

Unshakeable Commitment to Jailing

Resisting Reasonable Jail Reduction Strategies

County Counsel fought against jail releases during the early spread of COVID, despite dire warnings from public health experts. Counsel went so far as to force the Office of the Public Defender to abandon its efforts to protect people who were in jail for misdemeanors or probation violations.

County Counsel claims the county does not need to reduce the jail population. Counsel has made this claim in writing, with complete disregard for the county’s agreement under the federal consent decree to consider ways to reduce the population. In a March 8, 2022 letter to plaintiffs’ counsel responding to a complaint about conditions at main jail, County Counsel asserted, **“It is the County’s position that because the COVID-19/Omicron surge is now waning, it is not necessary to consider reducing the population.”** This displays a complete lack of regard by County Counsel for the federal consent decree. This disposition was evident throughout the March 10, 2021 Board Workshop.

(Link to letter directly below. Scroll down for link to the March 10, 2021 Board of Supervisors Workshop with specified times to view in the recording.)

[Letter from County to Plaintiff’s Counsel, March 2022](#)

To us, it has become obvious. Report after report recommends jail population reduction as a preferred remedy—including reports from plaintiff’s monitoring experts and from the county’s own contracted experts. And yet, County Counsel has stated in writing and verbally that they have no intent or obligation to reduce the jail population. *These are among the powerful crafters of the county’s narrative about the need for a new jail facility. Their ongoing failure to convey the whole truth is in itself a miscarriage of justice and will lead to much larger and far-reaching miscarriages if their persuasion campaign succeeds.*

Closing Off Options—and Misrepresenting Actions to Board and Court

Staff misrepresented role of Mental Health Treatment Center to Board of Supervisors. The March 2021 Justice2Jobs / Greater Sacramento NAACP [SNAPSHOT: 3 Critical Criminal Justice Programs](#) questioned why the Sacramento Mental Health Treatment Center (SCMHTC, also referenced below as “MHTC”) was not returned to its original 100-bed capacity to help alleviate the practice of jailing people suffering from mental health issues. Days later, in the March 10, 2021 Workshop, Supervisors asked County decision-makers to verify SCMHTC’s role and potential role in jail overcrowding, transfers, and appropriate treatment. In direct contradiction to the evidence provided in the Justice2Jobs / Greater Sacramento NAACP report, **decision-makers in the Workshop claimed, incorrectly, that SCMHTC had zero transfers from the jail.** During several exchanges in the March 10, 2021 recording, linked below, staff shared blatantly false information with the Board and the public about jail transfers to SCMHTC. **The recording also captures with great clarity the unwavering intentions of County staff to build a jail.**

Shortly afterwards, “In March 2021, the CCPAB [Community Corrections Partnership Advisory Board] reached out to the MHTC to determine whether it is currently used as an alternative to incarceration. **Per the MHTC, roughly 50% of their population in March 2021 was from the jail** and it operates at nearly full capacity daily. Data suggests that there is a need to increase community-based capacity for mental health treatment throughout Sacramento County. The CCPAB recommends expansion of alternatives to incarceration through outpatient and inpatient mental health treatment services in the community.”¹⁰ (Emphasis added.)

County later acknowledged the truth but failed to inform the public and Board of the correction. The truth was revealed. The Justice2Jobs / Greater Sacramento NAACP had reported correctly, and the report was then included in the CCP 2021 AB 109 report update. Although the AB 109 report update corrects the misinformation presented at the March 10, 2021 workshop about SCMHTC, there was no effort made to inform the public about the misinformation. **Most egregiously, the Board of Supervisors was never told about the correction. They were left to make decisions about millions of dollars without correcting the accuracy of one of many important puzzle pieces.**

Counsel tried to close off an important release valve for persons in jail with mental illness. More recently, Counsel, representing SCMHTC, asserted in a show cause hearing that a conservatorship client could not be transferred to the facility from the jail because SCMHTC is solely an acute crisis center and is not an appropriate placement for subacute clients. Although this may be true in writing, in practice this would have been a substantive change in policy, because for more than 20 years

¹⁰ Sacramento County Probation [2021-22 AB 109 Plan Update \(sacounty.gov\)](#) p.37.

conservatorship clients have regularly been sent to SCMHTC. Yet, no actual policy change had taken place. Instead, County Counsel appeared to be trying to create a de facto policy practice change by declaring a new restriction. The impact of this change would have been to close off an important, existing alternative placement for people in jail with mental illness, **thereby strengthening executive staff's argument that the county needs a new mental health jail facility.** If this was indeed Counsel's intent in asserting the new limitation, it was a cynical move, further harming some of the county's most vulnerable individuals in the interests of advancing staff's misguided priority of securing a new jail facility. If it was a reassertion of a lack of adherence to acute crisis center policy, why is the policy being enforced at a time of our most severe need for placement? In a sound decision, the court did not accept County Counsel's unsubstantiated argument and ordered the client transferred to SCMHTC.

Once again, however, as of the release of this report, the county is limiting access to SCMHTC even when space is available. In the September 14, 2022 Board Workshop, the Deputy County Executive for Social Services noted that "Currently we don't take folks directly from law enforcement into the treatment center." But why? Law enforcement agencies need alternatives other than the jail and emergency rooms. Currently, SCMHTC is one of few facilities equipped to accept persons with severe mental illness. It seems that this is yet another issue of maneuvering to foreclose a policy/practice that would give law enforcement an option other than jail.

Watch the Board of Supervisors March 10, 2021 Workshop to see first-hand the evidence described above:

[Sacramento County Board of Supervisors March 10, 2021 Workshop \(saccounty.gov\)](https://saccounty.gov)

1:09:00-1:09:52 (52 seconds)

1:23:00-1:23:20 (20 seconds)

1:36:00-1:37:20 (1 minute 20 seconds)

2:02:26-2:05:09 (3 minutes 13 seconds)

2:19:30-2:19:55 (25 seconds)

#2 Good Decision Making is Harder . . . But Way Better

In making their case, Sacramento County staff have not provided Supervisors with the information needed to make a fully informed decision.

Key Principles

Core principles of decision-making for public safety (as for public health and other policy areas) requires a clear problem definition, consideration of goals and values, a theory of action (how proposed solutions address identified problems), alternative solutions, cost-benefit analyses, and likely unintended consequences. Public health policy making also considers equity impacts, as should all public safety decisions. The information provided to the Board to date meets none of these standards.

What is the problem definition? County staff are framing the problem very narrowly: an inadequate and outdated jail facility that prevents compliance with a small, though important, subset of *Mays* requirements. Addressing this narrowly framed problem would leave the county with the bulk of the *Mays* issues unresolved. Inhumane conditions stemming from the culture of the institution, lack of adequate medical and mental health care, sanitation, and basic human decency form the majority of the complaints. Properly defined, the problem calls for a very different solution than jail construction.

What are the county's goals and values? Meeting the county's stated purpose, vision, mission, and values is nonexistent in the county's approach to solving these horrendous violations of justice. The approach does not "Enrich Communities to Thrive" nor are the individuals pushing this narrative acting as a "Trusted Employer and Organization, Serving Our Communities with Transparency, Courage and Innovation."¹¹ Nor does the county's approach to date "Identify and implement solutions to eliminate institutional, structural and systemic racial inequity in ... criminal justice/law enforcement" nor "deploy community-based alternatives to prevent trauma and eliminate harm associated with racial inequity," as resolved in the Board's declaration of racism as a public health crisis.

Where is the theory of action? See, #3 *Focusing on Jail Instead of Population Reduction is a Fool's Errand* on page 17. We further address how the county fails to show how their theory of building a jail will fix the problems, when the evidence shows incarceration doesn't make us safer.

Where is the cost-benefit analysis for the proposed and alternative solutions? The preliminary Jail Population Reduction Plans, although a step in the right direction, does not offer enough information in its current form. Although the county has included recommendations from the March 2021 Justice2Jobs / Greater Sacramento NAACP [SNAPSHOT](#) report along with many other post-arrest approaches, the plan fails to suggest that **the majority of resources should focus on upstream prevention measures and restoration from recorded criminal histories, which are known to reduce crime**. Nor does the plan propose any efficacy standards or reference expected outcomes—important elements for remedies involving such consequential system change. **The plan does not include program efficacy or cost data or estimates**, and no program budgets are provided. In fact, the budget structure for the county, as displayed in the county's 2022-23 Annual Budget, is oriented toward line items and does not allow for program-level analysis—another system failure.

Although we appreciate the index of programs (it should have been done long ago), no analysis is offered to determine their efficacy or show the efficacy of comparable programs implemented elsewhere. How could the county possibly be fiscally responsible in their consideration of an augmented billion-dollar facility without determining the costs and benefits of current service programs and potential program expansions?

What are the unintended consequences? Moreover, some of the recommendations on the list are aspirational and do not currently exist. The Justice2Jobs Coalition (J2J) supports **pre-conviction** programs—especially those that are community-based, not run by or accountable to law enforcement agencies—because they are the least harmful to the person, their families, and their neighborhoods, and have the most effective public safety track records. However, many recommendations are **post-conviction** programs that have much lower success rates and often lead to jail population increases, which is contraindicated to meet the consent decree. We also note that many of the

¹¹ Sacramento County's Core Purpose, [Mission, Vision, and Values \(sacounty.gov\)](#).

programs focus on law enforcement oversight. Under California law, Probation is codified as law enforcement. Diversion programs that include law enforcement, by the nature of the organization and law enforcement officers' training and orientation, are focused mainly on holding people accountable rather than on nurturing them toward stability and wellness. The efficacy of law-enforcement involved programs is far lower than for programs centered in departments that are primarily focused on protecting the presumption of innocence and the right to not self-incriminate, and on professionally addressing the social conditions, health and trauma that are the root causes of criminalization for the majority of people in Sacramento County Jails.

Shooting Ourselves in the Foot

County's public safety approach drives our high incarceration rates

There is an assumption, shared by many inside and outside of county government, that people in the jail are there because they are a danger to the public. That's false. If we are to meet the humane conditions demanded by the federal court, we must transition away from pathways that inadvertently and/or unnecessarily put people in jail. This also means that we have to define agencies that are not in the business of putting people in jail and instead look to fortify those agencies that can better serve the needs facing the majority of the population who are currently jailed, as noted in the previous paragraph.

Keep in mind that 83% of people in Sacramento County jails have not been convicted of a crime and should be presumed innocent, and that on any given day close to half have some combination of a substance use disorder and/or a serious mental illness.

Our warrant system fills the jails. According to the O'Connell Study, warrants are defined as, "bookings for court-issued warrants for failure to appear in court, not appearing for probation supervision. Individuals can also be booked on warrants originating from other county or state agencies . . . 40% percent of jail bookings do not involve a new crime." Considering that our jail population identifies almost two-thirds of the people inside with mental health needs, it is no surprise that 36% of all warrants were attached to people with a serious mental illness (SMI).

"34 percent of the jail population is in custody for violating probation, parole, conditions of release, or warrants for failing to appear for court dates—not pending new charges."

Law-enforcement centered "care" is counterproductive. "The 225-page report, *Revoked: How Probation and Parole Feed Mass Incarceration in the United States*, finds that supervision—probation and parole—drives high numbers of people, disproportionately those who are Black and Brown, right back to jail or prison, while in large part failing to help them get needed services and resources."¹² The systems created to help us stay safe are, in fact, exacerbating drivers for growth in incarceration and the subsequent harm to persons and the community, harms that undermine long-term psychological and physical health and related behavioral actions.

For instance, if an unsheltered person is in the wrong place at the wrong time, or trespasses, or in their emotional rant harms someone, they are likely arrested. They lose what little else they own. Sometimes, if it is someone who lives in a vehicle, the vehicle is towed and impounded at the owner's

¹² [New ACLU and HRW Report finds Probation, Parole Feed Mass Incarceration Crisis | American Civil Liberties Union](#)

expense. Even if that person is released within days, the person has experienced further trauma, has little chance of being able to retrieve their belongings, and is in a worse state than prior to their arrest.

Considering Black people are arrested at 5 times more than their white counterparts¹³, it is not surprising that we see that same disparity in the jail population.

Then there is probation-centered release. Some is pretrial and some is post-conviction. However, commonly across both types, rearrests occur for issues like missing court dates or being late for a check-in with an officer. These violations, especially for those who already have a record, increase lengths of stay and contribute to jail overpopulation.

The bottom line is that law enforcement officers are not trained to be care providers. Police, Sheriff, Probation, Protective Services, and guards are trained to enforce the law. They do not practice, nor are they accountable to practice, trauma-informed interactions. Consideration of care needs are low priorities in their job descriptions and accountability criteria. For this reason, holistic defense models, because they include root cause evaluation and connection to services, are infinitely preferable to law enforcement-centric models.

Siloed Infrastructure Exacerbates Mental Health System Failures and Jail Overpopulation

Many of the offenses Sacramento's incarcerated people are charged with are a consequence of untreated mental illness, substance use disorders, and homelessness. Yet our system reverses the logic and seeks to incarcerate first and then provide treatment inside the jail. Among many problems with this approach, every day a person is in jail increases the likelihood of future re-incarceration. It also leads to a vicious cycle in which individuals are punished for behaviors related to their illnesses, for which the county has insufficient treatment resources outside the jail and for which treatment inside the jail is ineffective. People who are in need of health interventions are better treated outside of a jail in a health-prioritized environment. That is the only way to end the cycle of incarceration stemming from unmet needs and untreated illness.

The [SNAPSHOT](#) report offered three remedies that could be heavily invested in to ameliorate the current situation. The remedies are part of the 2021 AB 109 Plan Update and at least two are included in the recently released PSJA Jail Population Reduction Plan. However, here again, the implementation of these programs is very complex. Our current understanding is that the Office of the Public Defender needs many more attorneys to protect people with mental health diagnoses from incarceration and instead connect them to care services—a more likely rearrest prevention. Additionally, Behavioral Health Services (BHS) is so grossly understaffed that it takes BHS two to three months to assess a person in the jail and another three months to connect them with services. There is currently a county policy that allows the public defender to refer only 5 jailed people per week to BHS. Keeping in mind that over half of the people in the jail are determined to need mental health intervention and hundreds are waiting for mental health diversion, there is an obvious clog in the get-out-of-jail-pipeline. This places a tremendous burden on the medical staff inside the jail, creates overpopulation, and worsens individual's health conditions. Most tragically, this system failure causes even more trauma to those arrested, and the outcomes in some cases are needless deaths.

¹³ [Report: Sacramento police more likely to stop Blacks, Latinos | The Sacramento Bee \(sacbee.com\)](#)

Systemic Lens and Analysis of All Remedies Should Be an Expectation

It is important to note that the supervisors are doing their due diligence and questioning the process. However, as mentioned many times, they are highly dependent on county staff to give them the relevant information needed to make informed decisions. At the end of this paragraph is a clip of Supervisor Nottoli investigating the process. He asks about tools and related costs. Depopulation is discussed. Now, twenty months later, the questions surfaced in this discussion remain unanswered. Why? Why has there been no public presentation by the independent monitors who wrote the reports, and no public opportunity to query the content of those reports? Why are the methods of depopulation used by the Courts during COVID, which are still relevant to overpopulation under *Mays* today, not being employed? Where is the analysis of the county's employee retention difficulties? In the March 2021 workshop, Supervisor Nottoli goes on to point out that the facilities are not the only problem, but consistent with other narrative practices, at the end of this segment, the jail narrative is reinforced as staff softly redirects the supervisor to the jail facility option.

[Sacramento County Board of Supervisors 3/10/2021 Workshop](#); see minutes 0:57:47-1:16:47.

Most disappointing in this approach is the tremendous amount of time and energy spent on an option that the Board and the public have clearly stated on numerous occasions as the wrong direction. The twenty months that have passed could have been used as a collaboration, much like the newly formed Public Safety and Justice Agency Advisory Committee. That's twenty months of noncompliance, further erosion of credibility with plaintiff's counsel, and worst of all, suffering of the people inside the jail, contributing to additional preventable deaths.

Hasty Decisions Will Land Sacramento Back in Court

The county is under pressure to approve a remediation plan for *Mays* violations, having already missed an October court deadline. But a hasty decision based on incomplete and misguided information will make matters worse for the county in the long run, landing Sacramento back in court with costly extensions of the consent decree and additional lawsuits for years to come. A premature decision would also compound the harms experienced by the community under the current carceral environment. **Instead of doing the most convenient thing—accepting the staff's jail expansion proposal—the Board of Supervisors should do the right thing for Sacramento—**negotiate with *Mays* plaintiffs' counsel and the court to allow time for a sustainable, healthy decision for all parties.

#3 Focusing on Jail Construction Instead of Population Reduction is a Fool's Errand

A New Jail Will Not Fix the System Problems

Several Sacramento- specific studies have concluded that building a new jail is not the solution to the county's jail-related problems.

Reports from the Carey Group, RAND Corporation, plaintiffs' counsel, independent researchers, and independent community organizations like the Justice2Jobs Coalition, ACLU, and Decarcerate Sacramento which provide effective analysis at no cost to the county, agree on this point. The recent O'Connell Sacramento Jail Study commissioned by the county underscores this conclusion.

- Nearly two-thirds of the jail population has mental health needs
- 55% of the jail population has serious mental illness (SMI)
- 50% of this population reenters the jail over and over
- 83% of the people inside the jail are not convicted of a crime
- *How will building a new jail fix these problems?*

The heart of the Mays' complaints is unethical treatment of individuals. The subject matter experts all identify necessary changes in policy, procedures, and organizational culture to remediate this core problem.

How will building a new jail fix this problem?

Readmission is a key driver of the jail population. Incarcerating people has no positive effect and possible negative public safety effects.

How will building a new jail fix this problem?

The solutions all point to upstream interventions and out-of-jail responses to chronic health needs to improve the lives of Sacramentans and address public safety factors in the community as a way of preventing public harm.

How will building a new jail fix this problem?

Can't Know Size and Scope of Problem Until We Depopulate

As noted above, before implementing population reduction strategies, the county has no way to know the size and scope of the remaining facility issues. Eliminating overcrowding would mitigate and in some cases eliminate identified facility deficiencies and would make possible different uses of space within the existing facilities.

Can't Control What Goes On in the Jails

We have heard all the Supervisors express absolute dismay about how people are treated in the jail. We share that sentiment. However, that sentiment will not help bring about solutions in the jails. This is because the jail is an extension of the sheriff. **What goes on inside the jail is up to the sheriff, not the Board of Supervisors and not county executives.** For County Counsel to negotiate in good faith with plaintiff's counsel, they must concede that the only remedies that can be offered are those that the sheriff accepts or those that the Board of Supervisors and executives can control.

Three independently elected positions in Sacramento County have little public accountability. These are the District Attorney, Judgeships, and Sheriff. If these officials violate the law, it is the

county that is sued, not the departments they lead. There is little political incentive for these elected officials to be humane and find ways to restore people. They are elected to their positions, and their careers depend on reelection. None are trained as social workers or care professionals. All have incentive to lean toward pleasing public sentiment over preserving individual human and civil rights. No minimum threshold of understanding is required about trauma-responses or factors that create harmful behaviors.

Unlike the broad public accountability of the elected positions of the Board of Supervisors, these electeds, by code and or constitution, are accountable to enforce the law as they see it. Their ideology is inconsistent with current trajectories of evidence-based restoration based on current public safety science. Most default to punishment over care despite mountains of evidence that punishment actually creates more crime. Part of the reason is that much of the public is also unaware of the evidence against punishment, thanks to the powerful but false narratives popularized by law enforcement interests. People continue to support the old adage, “If you do the crime, you do the time,” without understanding how that approach impacts public safety, health, families, neighborhood disinvestment, or the region’s quality of life. We, the public, like to fool ourselves into believing a proven falsehood: that more law enforcement leads to more safety. The Board is now facing the failure of that ideology in the form of the *Mays* federal consent decree—with no improvement in public safety.

With every dollar the Board allocates to the Office of the District Attorney, the Courts, or the Sheriff’s Department, they give away their oversight power. The elected officials that lead these departments have exclusive rights over how they govern their “domain”. No matter what the Board expects of those departments, they are faced with few ways to implement accountability. Current approaches to accountability are merely efforts to educate. The county:

- Creates oversight bodies like the Community Review Commission, but that Commission cannot remove the Sheriff (or recommend that the Board remove the Sheriff) because the Sheriff is elected.
- Creates other professional subject-matter-expert advisory bodies to help report concerns and recent professional findings. However, if the information the bodies are given from county professionals is not fully transparent and accessible, the computer science concept of “garbage in, garbage out” prevails. **This is especially true when only department heads are tapped for their knowledge, and when lower-level staff who work most closely with people impacted by or receiving county “services” are barred from communicating with policy makers.** (In this case, we do not see the jail as a service. However, from the county’s perspective, it is one.)
- Engages external experts, with the parameters for those experts’ reviews typically set by those who already control the narrative.

None of these create direct, actionable accountability of other elected officials. **The Board of Supervisors has very limited tools to bring about true accountability of other electeds.** Among the few actions the Board can take are to:

- Bring suit against the Sheriff—but this would create a conflict of interest, as County Counsel, in their official capacity, represents the Sheriff as well as the Board, putting Counsel in the position of suing their own clients.
- Allocate funding away from non-accountable entities and toward departments where the Supervisors have power to change the outcomes.
- Lower the maximum jail capacity.
- Learn from other counties like Los Angeles where Measure A just passed, to fortify the Board of Supervisors' ability to remove the sheriff.¹⁴
- Close the Main Jail.

Bargaining Away Sacramento's Future

Unable to entirely sidestep the county's commitment to reduce the jail population, our county executive just recently offered a two-prong approach: build the jail addition while *also* looking at population reductions. This would meet the county's need to meaningfully comply with *Mays* while also meeting the staff's longstanding goal to expand the jail. But at what cost? The jail construction would consume a huge share of current and future county resources—estimates on the last proposal put it at nearly \$1 billion in long term costs—for a solution that does not address most of the *Mays* complaints. Worse, it would leave precious little for the cost-effective measures that would address the bulk of the complaints.

Recommendations

Employ Sound Decision Making Practices

Follow Public Policy / Public Health Decision Making Best Practices

Develop a clear problem definition based on the findings in *Mays* and the subsequent monitoring reports. The definition should cover all aspects of the problem, not only the facility-related subset, and should include the major deficits identified in policies, practices, and organizational culture as well as Sacramento's high incarceration rates. Consider the county's mission, vision, and values, including the Board's recognition of racism as a public health crisis. Demand a theory of action for proposed solutions—how would they fix the problems, what are the steps or mechanisms, and what evidence supports this assertion? Demand an evaluation of alternatives—including those proposed by community experts and advocates—including cost-benefit analyses for comparison to the staff's proposed solutions. Ensure that equity is at the center of decision-making regarding potential solutions for the identified problems, which disproportionately affect Sacramentans who are Black, brown, poor, LGBTQIA, and/or navigate disabilities.

¹⁴ [LA County Measure A: Who's Backing the Charter Amendment to Remove Sheriff and Why it Matters | LAist](#)

Require County Staff to Meet a Higher Standard of Evidence

Staff should be required to demonstrate, with evidence, how their proposed solutions would solve each of the problems at issue in *Mays*. The remedial plans under the federal consent decree specifically call for changes to policies, practices, and organizational culture, areas the county has not fully remediated even though it would be far faster and vastly less expensive than building a new facility. A new facility will not bring about these changes. On the contrary, taking the same culture and practices into a new facility will only replicate and institutionalize the existing problems for another 30 years, in a more expensive new setting.

If the county cannot change the culture of the jail because that is under the sheriff's purview, that is an even more pressing reason to move people out of the jail and into situations where they receive community-based health services.

Executive staff should be asked to respond to each of the recommendations in the *Mays* monitoring reports and O'Connell Jail Study and detail why they have not seriously considered implementing those interventions. While a different facility could address a limited number of issues related to accessibility and privacy, these are only a subset of much bigger underlying problems in the conditions of confinement and could be addressed in a range of more cost-effective ways, as recommended by these experts.

We urge the Board of Supervisors to not be deceived by staff's seemingly carefully crafted narrative. Supervisors can instead deeply question appointed county leadership about why they have not fully implemented the recommended strategies in the remedial plans and are instead pushing for a new facility which would not solve the policy, procedure, organizational culture, and personnel problems at issue in the consent decree.

Instead of Funding New Jail Facility, Implement Evidence-Based Practices that Truly Protect Public Health and Safety and Ensure Equity

Do what works

Instead of committing huge sums to fund a new facility, we urge the Board to direct county staff to implement recommended strategies identified in the remedial plans, subsequent monitoring reports, and the non-law enforcement-involved remedies suggested in the Public Safety and Justice Agency Jail Population Reduction Plans. This includes significantly increasing prevention and treatment options offered by community-based services that can more humanely address the inequities, poverty, mental illness, homelessness, trauma, and substance use that is landing so many Sacramentans behind bars when instead they need care.

Move upstream and restore

Take the long view and most effective approach, heavily investing in:

- Non-law enforcement-implemented deflection and pre-conviction programs for people arrested, including youth. Programs like the Juvenile Trauma Response Court, Mental Health Diversion, the Public Defender's Pretrial Support Program, and the Exodus Project.
- Keep in mind the U.S. Constitution 8th Amendment issues of equal access to these programs. Currently, people who have a conflict panel attorney or a private attorney do not have access to the holistic defense programs currently housed in the Office of the Public Defender, which have proven to be the most effective and least supported of Sacramento's pretrial programs.
- Fully implement California's newly signed law, AB 2167, which requires courts to consider alternatives to incarceration including diversion and restorative justice and intends for courts to use the least restrictive means available.
- Create a robust marketing campaign for the [Wellness Crisis Call Center and Response Team](#) (formerly Alternatives to 911 for Mental Health) to divert calls away from law enforcement and toward remedies that work.
- Provide contracts for trauma-based mental health and / or substance use treatment programs (outpatient and residential) that can be implemented in smaller settings so community-based advocates and organizations can purchase or lease residences and other facilities to offer high levels of care that are not institutional.

Meet the letter and spirit of the Mays federal consent decree

- **Lower the maximum capacity** of people the sheriff controls. (Currently, the two jails have a capacity of 4,005 beds, 2,532 at the main jail and 1,473 at the Rio Cosumnes Correctional Center.) Instead of 911, use the Crisis Call Center and Response Team to divert phone calls away from law enforcement for any issue involving mental health or homelessness. The minute the sheriff receives the call, their primary focus is to enforce the law, not offer restorative services. Currently the sheriff takes the following actions:
 - Arrest, which means going to jail and contributing to jail capacity issues
 - Cite and Release
 - Emergency Rooms (an expensive option)
 - Public drop-off centers prior to booking—of which we currently have one or two that serve the entire 994 square miles of Sacramento County.
- **Look at the entire system** including both jail facilities and community-based alternatives—with heavy preference for community programs—to specifically meet ADA, privacy laws, health needs, and standards of human decency.

- **Focus on services** provided by the community or the county that focus on non-carceral and non-punitive-based services and restoration—the Public Defender’s Pretrial Support Program that partners with Exodus Project, pre-plea diversion programs, deflection support, and decentralized detoxification centers with trauma counseling and wrap services.
- **Create a hiring freeze for law enforcement departments**, including probation, and focus on non-carceral, health care-based services. Offer the same law enforcement salary to social workers—which will relieve the difficulty in hiring. (We understand this is a labor issue. We also understand that the priority is treating people humanely over all else which preserves public safety and regional quality of life.)
- **Heavily invest in non-law-enforcement programs** that treat trauma and restore our youth and their families and neighborhoods. This especially includes foster youth, impoverished youth, unhoused youth, and youth who live in neighborhoods that are heavily policed.

Ultimately, building new carceral facilities that rest under the jurisdiction of a sheriff cannot meet and sustain the demands of the consent decree or prevent future legal action.

Create an Office of Diversion, Re-Entry and Restoration with Client Protections

Holistic defense is a high quality standard this county should fully employ. The model upgrades traditional public defense models. It combines all the civil rights and other protections that come with a public defender and adds an interdisciplinary and multi-system approach that addresses underlying factors driving a person into the criminal-legal system. This is not a replacement for a traditional strong, court-defense counsel. This is an augmentation to add a team of professionals to assess and create a plan that centers and fully prioritizes the best interests of the client.¹⁵

Sacramento County has an opportunity to build on the holistic defense model that previous Chief Public Defender, Steve Garrett entrusted former Acting Assistant Chief, Tiffanie Synnott to create through federal and state grants. These innovations, some of which are award winning and nationally recognized, were initially in response to *Mays* and not fully supported by the county despite overwhelming evidence of their efficacy. The innovators faced fierce institutional resistance to change from executive staff and even within the Office of the Public Defender. Although the Office submitted several growth requests, they were denied at the executive staff level and excluded from the proposed budget. Only after community health equity experts who work on criminal-legal corrections through public policy spoke with Supervisors about these programs, were the Board and the public fully informed of their existence. This speaks to the culture of hierarchy, prioritizing traditional approaches, protecting the status quo, lack of acceptance of innovation, and selective sharing of information by county staff.

Now that the Board knows of existing, successful holistic models, it is time to create an entire agency that manages continuous implementation and improvement of these efforts. It should be noted that counties across the state (and in other states) are requesting the Office of the Public Defender’s

¹⁵ [The Effects of Holistic Defense on Criminal Justice Outcomes - Harvard Law Review](#)

Pretrial Support Project plan. We can also learn from models elsewhere, such as from San Francisco Pretrial¹⁶ and the Los Angeles Justice Care and Opportunities Department.¹⁷

Set a Higher Bar Than Minimum Standard

Finally, we urge the County Executive and our Board of Supervisors to practice our highest values and expect our outcomes to far exceed minimum legal standards of human decency. To the detriment of a true system change toward humane accountability and restoration, plaintiff's counsel will undoubtedly agree to any viable proposal that addresses even a subset of the issues because they are required to use the federal standard, which is very low, and cannot reject a plan that makes any progress on addressing the complaints. Instead of taking advantage of this situation to augment the jail, leaving the majority of the complaints remaining to address piecemeal for several more years, would it not be better to require staff to develop a comprehensive solution that meets a higher standard? How we treat our most vulnerable community members speaks to this county's culture of innovative thinking, valuing equity and inclusion, and respecting human dignity—these are the qualities of regions with the best public health and safety outcomes. Let's show that Sacramento can meet this challenge.

Conclusion

Once the county has implemented these far lower-cost, higher-yield strategies and evaluated the results, we are certain that new jail construction will become moot. Because then, if the county indeed has remedied the problems of policy, practice, and internal culture, it would not even need to consider a new building. Executive leaders should hold their staff accountable to demonstrate with clear and convincing evidence in accordance with the practices named above that their proposed solutions will deliver the desired outcomes—and to propose different solutions that truly *would* meet the county's objectives.

References

- **Mays Federal Consent Decree monitoring documents** (multiple reports from experts on medical care, mental health and suicide prevention, restrictive housing, discipline, classification, and environment of care, including as recent as October 2022)
 - <https://www.disabilityrightsca.org/cases/mays-v-county-of-sacramento>
- **Recent County-Commissioned Reports and Plans**
 - [Nacht and Lewis. Main Jail Capacity Report \(2022\)](#)
 - [O'Connell, Sacramento Jail Study \(2022\)](#)
 - [Still, Sacramento County Peer Review Report \(2022\)](#)
 - [PSJA. Jail Population Reduction Plans \(2022\)](#)
 - [Rand Corporation. Adult Psychiatric Bed Capacity, Need, and Shortage Estimates in California \(2021\)](#)
 - [Carey Group. Sacramento County Consultant Report on Jail Alternatives \(2020\)](#)
 - [Probation: AB 109 Implementation Plans \(sacounty.gov\)](#)

¹⁶ [About Us – San Francisco Pretrial Diversion Project \(sfpretrial.org\)](#)

¹⁷ [New LA County Justice Care and Opportunities Department Aims to Transform the Justice Landscape – County of Los Angeles](#)