

Date: April 8, 2020
To: Travis County Commissioners Court
From: Roger Jefferies
County Executive, Justice Planning
SUBJECT: CITY COUNCIL RESOLUTION ON MAGISTRATION

Our County criminal justice stakeholders are in receipt of Version 2 of Mayor Pro Tem Garza’s resolution related to magistration services provided by Austin Municipal Court judges.

It is unfortunate that various County stakeholders were not consulted before this proposed resolution was developed. There is information in the resolution that is incomplete. For instance, the resolution does not include a fiscal note or a commitment from the city to fund it. And while not suggesting that it was intentionally misleading, the resolution does not account for work already being done to reduce incarceration. In fact, Travis County is and has been a leader in the state in justice reform, including implementing a robust personal bond program and diversion initiatives. For example, in the third “Whereas,” it mentions that of 30,832 bookings in the Travis County jail in 2018, 67%, or 20,678 of those bookings were in jail on a Travis County charge only and had no external hold, suggesting they remained detained. However, it fails to mention that 71% of those 20,678 booked on a local criminal charge only, were released on a personal recognizance bond.

It is also important to note that Travis County has recently made significant advancements in improving the outcomes for defendants, including applying for and receiving a \$20.1 million grant from the Texas Indigent Defense Commission to establish a new Public Defender Office in Travis County. This commitment represents an additional \$14.8 million per year in indigent defense spending by Travis County once the grant match ends in FY 2024.

Regarding 24/7 defense counsel at magistration, the resolution does not address the cost to the city. The estimated cost for defense counsel alone is at least \$2.1 million. That estimate does not include all possible costs, such as space needs, County and District Clerk needs, and shift differentials. Additionally, when factoring in the cost of prosecutors to the 24/7 proposal, the total will exceed \$4.1 million based on current estimates.

The County Attorney reminded us that, under Texas statutes, counties are not obligated to accept city arrestees until AFTER magistration. Should the US 5th Circuit ultimately rule that arrestees are entitled to appointed counsel at magistration, the major portion of such costs should be borne by the City of Austin since the majority of bookings are the result of APD arrests (69% for March 2020; 63% for last 12 months).

One more point: the resolution repeatedly directs the ILA working group to address the issues raised in the resolution. While the ILA working group is important to address existing fiscal issues, we believe it would be appropriate and more useful if issues such as the provision of the defense counsel at magistration is addressed by the established “Who’s in Jail and Why” working group, including participation by the City of Austin. The “Who’s in Jail and Why” working group has already been charged by the Commissioners Court with developing an application to the Texas Indigent Defense Commission to fully fund a one year pilot for 24/7 defense counsel at magistration.

On April 8, 2019, the jail population was 2,123, an already historically low population. Today, on April 8, 2020 the jail population is 1,626, a 30% reduction from a year ago. While some of this immediate dramatic drop has taken place following the implementation of the COVID-19 mitigation strategies, much of the historic drop in the jail population over the last several years has been a result of some very robust and creative strategies initiated by the County, often in partnership with the City.

Examples of County initiatives to decrease the jail population include:

- The County Attorney’s Office is no longer prosecuting misdemeanor charges of Possession of Marijuana. In fact, the County Attorney dismissed over 2,000 outstanding misdemeanor charges in early 2020.
- In a collaboration between the Law Library, County Attorney, Austin Police Department, and Justice of the Peace 5 a strategy has been implemented to reduce the number of arrests and detentions for Driving While License Suspended.
- This District Attorney’s Office has implemented a State Jail Court docket for state jail cases that reduces the time in detention for those charged with state jail felonies. When compared to baseline data, state jail court defendants who were in jail at the time of their disposition spent an average of 69.4 fewer days in jail. This is a 72.3% decrease in jail days. When compared to baseline data, State Jail Court defendants who were on bond at the time of their disposition spent an average of 22.6 fewer days in jail. This is an 83.4% decrease in jail days. Fewer jail days reduces the average daily population of the jail.
- Integral Care is currently funded by a state grant to operate a Forensic Assertive Community Treatment (FACT) program. FACT is an initiative to provide case management, services and housing to mentally ill frequent users of the criminal justice system. It serves as an alternative to incarceration for seriously mentally ill individuals and has reduced the number of seriously mentally ill individuals who are arrested and spend time in jail.
- Through a joint City/County collaboration, a local government corporation was established to operate a sobering center to reduce arrests for public intoxication. This option allows for the police to divert individuals who would otherwise have been booked into the jail for the charge of Public Intoxication.
- The City of Austin, with input from County and Community stakeholders, implemented the Freedom City Initiative. The Freedom City Initiative is a City Council directed program to increase the issuance of citations for eligible Cite and Release offenses and decrease jail bound arrests.

In just the last few weeks,

- The County Attorney requested and the County Court at Law judges signed a Standing Order which grants automatic personal bond for any misdemeanor with outlined exceptions.
- The District Attorney requested and the District Judges signed a Standing Order that grants automatic personal bond for certain eligible felonies.

- At the request of the County Attorney and the District Attorney, respectively, County and District Judges issued General Orders that temporarily suspended enforcement of outstanding warrants for nonviolent offenses.

There are additional jail diversion strategies currently in the planning stages:

- Currently in the planning stage is a Pre-Arrest Deflection Program between the District Attorney, Austin Police Department, Justice Planning, and Community Groups to divert low level drug felonies from arrest to treatment and other services. The County received a technical assistance grant from the Bureau of Justice Training and Technical Assistance to help develop the program.
- The Commissioners Court created a Who's in Jail and Why Workgroup. The workgroup is a collaboration among Justice Planning, District Attorney, County Attorney, local Judges, Pretrial Services, and the City of Austin to understand who is in our jail and why, and explore opportunities for release for those who are in jail. This group has been directed by the Commissioners Court to develop a grant application to the Texas Indigent Defense Commission to fund a pilot for providing defense attorneys 24X7 at magistration.
- Justice Planning is in the process of procuring and implementing a Risk-Needs-Responsivity Simulation Tool, which is a collaboration among Justice Planning, Pretrial Services, Probation, and community programs to evaluate our programs designed to reduce recidivism and identify gaps in services. We anticipate this will reduce the need for future arrests and incarceration.

While this list is long, it is not complete. Travis County's Justice Planning completed in the summer of 2018 a comprehensive Diversion Program Asset Map which contains a comprehensive list of Travis County criminal justice programs and services, many of which have had an impact on our jail population.

Again, we believe we all share the view that no one should be incarcerated unnecessarily. As demonstrated above, both the County and City, along with our community partners, have historically worked often in tandem to reduce unnecessary arrests, incarceration, and to provide needed services. Unfortunately, the spirit and letter of the resolution currently does not reflect that reality.

I hope this memo answers any questions the Commissioners Court may have.