

RESOLUTION NO. 20200409-030

WHEREAS, under interlocal agreement with Travis County and the City of Austin for Booking and Related Services (the “Interlocal Agreement”), the City of Austin Municipal Court judges conduct magistration hearings in accord with the requirements of Texas state law at the Central Booking Facility located at the Travis County Criminal Justice Center, for persons arrested and charged with Class A and B misdemeanor offenses and felony offenses; and

WHEREAS, anyone who cannot afford the secured bail amount and who is not released on unsecured bond (i.e., “personal bond” or “PR bond”) will remain detained in the Travis County Jail; and

WHEREAS, according to the Who is in Jail and Why Committee Report presented to stakeholders in February of 2020, of the 30,832 bookings in the Travis County Jail with local criminal charges in 2018, “67% (20,678) had new charges only. This means that they were booked into jail for a Travis County charge, and had no external hold or Travis County exclusion (e.g., bond forfeiture, motion to revoke probation, application to revoke probation) that could impact their ability to be released on PR bond”; and

WHEREAS, at any given moment, there are people held in the Travis County Jail are presumptively innocent and have not been convicted of the crime for which they are being detained; and

WHEREAS, the U.S. Supreme Court has ruled that “[i]n our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,” *United States v. Salerno*, 481 U.S. 739, (1987); and

WHEREAS, the Fifth Circuit Court of Appeals has found requiring unaffordable secured bail amounts results in the “absolute deprivation of [indigent arrestees’] most basic liberty interests—freedom from incarceration,” *ODonnell v. Harris County*, 892 F.3d 147, 162 (5th Cir. 2018); and

WHEREAS, pretrial detention separates people from their families, communities, and livelihoods, and research shows that even short stays in jail destabilize families, increase recidivism rates, and lead to an increase in new charges; and

WHEREAS, pretrial detention often forces people to plead guilty, even if they are innocent, solely so that they can get out of jail earlier rather than languish behind bars, resulting in criminal convictions may follow people for life; and

WHEREAS, research shows that people detained pretrial are more likely to be convicted, more likely to be sentenced to jail, less likely to be sentenced to probation, and are given longer sentences than similarly situated people released pretrial; and

WHEREAS, “release on unsecured personal bonds or with no financial conditions is no less effective than release on secured money bail at achieving the

goals of appearance at trial or avoidance of new criminal activity during pretrial release,” *ODonnell v. Harris County*, 251 F. Supp. 3d 1052, 1103 (S.D. Tex. 2017); and

WHEREAS, the Travis County jail population is approximately one-fourth Black or African American—more than three times their representation in the Travis County population; and

WHEREAS, pursuant to rulings finding that Harris County violated both the Due Process and Equal Protection clauses of the U.S. Constitution by using secured money bail as a *de facto* pretrial detention order against indigent people charged with misdemeanors, the Harris County Criminal Court at Law Judges enacted Rule 9 in January, 2019, requiring the efficient release of the vast majority of people arrested for misdemeanors and robust procedural and substantive protections at bail hearings; and

WHEREAS, under Rule 9, the Harris County Criminal Court at Law Judges release most people charged with misdemeanor offenses without any payment and avoid inequitable, unnecessary, and time-consuming processes prior to release, including: lengthy pretrial services interviews, risk assessments, and magistration; personal bond fees and fees associated with nonfinancial conditions of release for indigent arrestees; and the use of monetary bail for most misdemeanor arrestees and, in cases where it can be considered, requires a judicial officer to make an

individualized determination of ability to pay at a hearing with counsel, consider alternatives for those who cannot pay, and if unaffordable money bail is required, make a finding that detention is necessary to meet a compelling interest; and

WHEREAS, to comply with the Due Process Clause and Equal Protection Clause of the U.S. Constitution, precedent dictates that magistrate judges, including Austin Municipal Court judges acting as magistrates, may not require unaffordable monetary bail as a condition of release unless they first inquire into the person's present ability to make a payment and make findings on the record concerning ability to pay, provide a meaningful opportunity at a hearing with counsel to make arguments in support of release and for alternative conditions of release, impose only the least restrictive conditions of release necessary to reasonably prevent flight from the jurisdiction or reasonably assure public safety, and if unaffordable money bail is imposed, make a finding on the record that totally incapacitating the person is necessary to meet a compelling government interest, and that counsel must be provided for indigent defendants at bail hearings; and

WHEREAS, any bail reform policy should have as its explicit goals (1) a decrease in the number of people detained prior to trial; (2) a decrease in racial disparities in the jail population; and (3) a reduction in the amount of time people spend in jail prior to their release pretrial; and

WHEREAS, any bail reform policy should ensure efficient pretrial release

prior to magistration without a lengthy pretrial services interview or magistration for most people charged with misdemeanors, state-jail felonies, and all other felony offenses that do not involve the use or threatened use of physical harm to another person; and

WHEREAS, the City Council passed Resolution No. 20160811-037, affirming that it is the policy of Council that the City make every effort to avoid committing to jail persons who cannot afford to pay fines, and outlining several strategies and values of the City of Austin in an effort to develop a more equitable court system that does not treat people disparately depending on their income; and

WHEREAS, the Council passed Ordinance No. 20171012-014 to establish the Judicial Committee and its charges to appoint Municipal Court Judges and evaluate their performance; and

WHEREAS, in 2018, the Council adopted Strategic Direction 2023, which includes “Fair Administration of Justice” as one of Council’s Top Ten indicators of success toward the strategic outcomes in the plan, as well as a number of other indicators of equity in interactions with government and strategies to improve equity; and

WHEREAS, on February 6, 2020, the Travis County Courts at Law Judges issued Standing Order for Personal Bonds on Misdemeanor Cases in Travis County (C-1-CR-11-100054) that outlined a procedure for releasing all persons arrested for

misdemeanor crimes on personal bonds except in certain circumstances; and

WHEREAS, the Interlocal Agreement provides that the City and Travis County will convene a working group in 2020 to review the terms of that agreement and propose changes and/or amendments to it; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The Council supports the standing order issued by Travis County Courts at Law Judges on February 6, 2020, and the standing order issued by the Travis County District Courts on March 23, 2020, as they represent movement toward a more efficient process for pretrial release. The Council encourages further reforms by Travis County and the State of Texas to improve equity and end wealth-based detention.

BE IT FURTHER RESOLVED:

The Council reaffirms its commitment to eliminating wealth-based detention and its commitment that persons must never remain in jail unless pretrial detention is the least restrictive means to reasonably assure public safety and appearance in court.

BE IT FURTHER RESOLVED:

The Council affirms the policy of the City that magistration hearings conducted by judges of the City of Austin Municipal Court at the Central Booking Facility should afford arrested persons all rights guaranteed under the U.S.

Constitution and Texas state law, and should provide at a minimum the following procedural safeguards for arrested persons to the extent permitted by state law:

- Interpretation services if there is any indication that the person does not speak English fluently or is hearing-impaired.
- Information provided to arrestees in plain language at or before magistration describing the following important legal rights:
 - The right to retain legal counsel and have counsel present during any interviews with peace officers or attorneys representing the state, and the right to appointment of legal counsel if the person cannot afford counsel, including procedures for requesting appointment of counsel;
 - The right to terminate any such interviews at any time;
 - The right to remain silent, and notice that any statement made by the person may be used against the person; and
 - The right to notice of the specific criminal charges against the person.
- Application of the following definition of “indigent” to determine whether a person arrested has the present ability to pay any amount of secured bail or to pay a fee or cost associated with a personal bond or a non-financial condition of release, including but not limited to, a personal bond fee, a supervision fee, a fee for electronic monitoring, or a fee for an interlock device; a person may be presumed to be indigent if the person meets any of the following conditions:

- Is eligible for appointed counsel;
 - Has income at or below 200% of the federal poverty guidelines;
 - Is a full-time student;
 - Is incarcerated, or residing in a mental health or other treatment program;
 - Is receiving means-tested public assistance; or
 - Is otherwise unable to pay the fee or cost without substantial hardship.
- Administrative procedures to provide magistrates and persons arrested with all information gathered by Travis County Pre-Trial Services, including any risk assessment score, the data that was used to determine the risk assessment score, and NCIC/TCIC criminal history.
 - The opportunity for a person arrested to be heard during magistration concerning any factors relevant to the person's release, detention, and the availability of alternative conditions; to present evidence available at that time to the person arrested concerning those factors; and to contest any evidence presented at the magistration concerning those factors.
 - An administrative procedure to track the magistrate's reasons for detaining an arrestee following magistration when the arrestee is eligible under state law for release on personal bond at magistration, including a written record of those reasons and of the required conditions for release set by the magistrate (if any).

- Administrative procedures to assure that arrestees are not detained following magistration, except to the extent consistent with state and federal law.
- Administrative procedures to assure that misdemeanor arrestees who are not released at magistration are promptly given a constitutionally adequate bail hearing with counsel before a Travis County judicial officer, who may impose financial and nonfinancial conditions of release.
- Administrative procedures that give magistrates sufficient information to determine in cases where detention following magistration results solely from an arrestee's inability to pay a cash bail, surety bond, or fee that no less restrictive conditions of release are sufficient to protect the safety of other persons or prevent flight from the jurisdiction; and which give magistrates the ability to make findings that such arrestee is indigent or otherwise lack the ability to pay such bail, bond, or fee.

BE IT FURTHER RESOLVED:

The City Manager is directed to engage with Travis County through the working group process described in the Interlocal Agreement, and with the "Who's in Jail and Why?" working group created by the Travis County Commissioners Court with City participation, with the goal of amending the Interlocal Agreement to create administrative procedures and a physical environment for the magistration process that enhances the opportunity for Municipal Court Judges acting as

magistrates to: (1) release arrested persons on personal bond whenever the magistrate determines it appropriate under the law and the facts; and (2) impose the least-restrictive pretrial conditions necessary to reasonably assure public safety and prevent flight from prosecution when release on personal bond is not appropriate. Without limitation, the City Manager is directed to include in discussions with Travis County for amendments to the Interlocal Agreement the administrative procedural safeguards described above in this resolution and in addition the following specific subjects:

- Sufficient space or accommodation to allow public access to the magistration courtroom and public observation of magistration proceedings;
- Representation by counsel at magistration hearings;
- An administrative process for giving arrested persons clear notice in writing of the rights at stake in the magistration in plain language understandable to non-lawyers; and
- A method for providing the City with data on arrested persons who remain detained in jail after magistration at the Central Booking Facility, including at a minimum for each person who remains detained:
 - The charges against the person;
 - The bond amount set by the magistrate;
 - Whether the person was determined by the magistrate to be indigent;

and

- The reason(s) the person was detained following magistration.

BE IT FURTHER RESOLVED:

Prior to presenting any proposed amendments to the Interlocal Agreement to the Council for approval based on this resolution, the City Manager shall provide Council with a financial analysis showing the cost to the City of each proposed amendment.

BE IT FURTHER RESOLVED:

The City Manager is directed to provide a report to the Council Judicial Committee in at its August 2020 meeting, or the soonest meeting thereafter, outlining the steps that have been taken to implement this resolution, with additional updates on implementation to the Judicial Committee every subsequent six months. These updates should include analysis of the data collected about arrested persons who remained detained in in jail after magistration at the Central Booking Facility, as described in this Resolution, once such data becomes available. The City Manager is further directed to make such data reports available on the City's public website.

BE IT FURTHER RESOLVED:

When evaluating candidates for appointment as judges to the City of Austin Municipal Court, the Judicial Committee may consider information concerning arrested persons who remained detained after magistration, as described in this

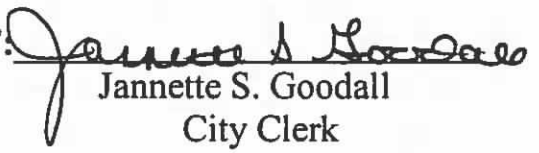
resolution.

BE IT FURTHER RESOLVED:

The City Manager is directed to work with the Innovation Office and the Equity Office to produce a report on the financial impact that the Travis County pretrial justice system has on Austin residents, and in particular lower-income residents and residents of color, who are disproportionately arrested. The report shall include analysis of:

- the amount of money Austin residents have paid and continue to pay to for-profit bail bond companies;
- the amount of money Austin residents otherwise pay in secured bail;
- the amount of money paid in personal bond fees as well as fees associated with non-financial conditions of release such as GPS and electronic monitoring, ignition interlock devices, SCRAM devices (ankle alcohol monitoring devices), and drug tests;
- other financial consequences associated with pretrial detention such as lost wages and employment; and
- any other relevant financial or equity impacts, including but not limited to effects on health, medical care, care for dependent children and family members, ability to pay rent and other bills, and ability to make payments toward debts such as car liens and student loan debt.

The City Manager shall present this report to the Judicial Committee no later than six months from the effective date of this resolution.

ADOPTED: April 9, 2020 ATTEST: 
Jannette S. Goodall
City Clerk