



August 12, 2019

Via E-Mail

Honorable Members of the Board of Supervisors
500 West Temple Street
Los Angeles, CA 90012

Re: Letter Supporting a) Motion to Cancel Design-Build Contract with McCarthy Building Companies, agenda item 14, b) Motion Exploring a Decentralized Continuum of Community-Based Services and Care for Los Angeles County, supplemental agenda item 73a, and c) Motion to Care for Individuals in Custody Who Are Experiencing Serious Mental Illness, agenda item 23 (August 12, 2019)

Honorable Members of the Board of Supervisors:

The ACLU Foundation of Southern California (ACLU), Critical Resistance Los Angeles, CURB JusticeLA, JustLeadershipUSA, Frontline Wellness Network, Million Dollar Hoops, and Youth Justice Coalition all support, and urge the Board to pass, agenda items 14, 23, and 73a for the Board's August 13, 2019 meeting with some amendments as set forth below.

1. Motion to Cancel Design-Build Contract

We enthusiastically support the Motion to cancel the design build contract with McCarthy Building Companies for numerous reasons. We agree with the statements in the motion that it is premature for the County to proceed with the contract until it has the results of various studies, including the study by RAND to determine the percentage of people with mental illness who can be safely diverted to community-based placements. Indeed, in the ACLU's letter to the Board on January 10, 2019, we urged the Board not to approve a design-build contract because – among other things -- doing so was premature. We stated that moving forward with any plan was misguided until, at minimum, the results of the RAND study and the road map to scale up diversion called for by the Board's August 18, 2018 Motion Scaling Up Diversion and Re-Entry Efforts for People with Serious Clinical Needs (Scaling Up Diversion)"

Cancellation is also appropriate because the contract was initially for a large mental health jail, a concept the Board wisely rejected in February. And a large, centralized mental health treatment center¹ at the site of the downtown jail is also not the appropriate way to meet the mental health needs of those people with behavioral health issues who are involved in the criminal justice

¹ In addition, the last proposal by the CEO to effectuate the Mental Health Treatment Center called for by the Board's February 12, 2019 Motion appeared to be in large part the very same mental health jail the board had already rejected. The misguided nature of building a mental health jail has been amply documented in letters to the Board from preeminent mental health experts including Drs. Terry Kupers, Pablo Stewart, Wes Boyd, Richard Lamb, Kenneth Mincoff, Joel Braslow and Philippe Bourgois.

system for the reasons set forth in detail in the February 12, 2019 and June 7, 2019 letters of Dr. Terry Kupers and the February 11, 2019 letter from the Judge David Bazelon Center for Mental Health Law.

Instead, the County should be moving towards funding and implementing a decentralized community based mental health system, as is set forth in concept in the preliminary report of the Alternatives to Incarceration Work Group and recommended by Dr. Kupers and the Bazelon Center. We are grateful that the Board is moving aggressively in this direction through the a wide variety of initiatives, including the creation of the Office of Diversion and Reentry and the Alternatives to Incarceration Work Group, as well agenda item 73a on the Board's supplemental agenda for its meeting tomorrow.

Thus, we urge the Board to pass the motion with a minor amendment: refer explicitly to the value of having the final report of the Alternatives to Incarceration Work Group before moving forward with any future plans designed to help the County implement a treatment first jail last for people with behavioral health issues.

However, we also urge the Board take immediate steps to set aside funding so that it can expeditiously implement the recommendations that will be set forth in the final report of the Alternatives to Incarceration Work Group, and the diversion Road Map the Board called for in its August 2018 Motion.

2. Motion Exploring a Decentralized Continuum of Community-Based Services and Care for Los Angeles County

We also strongly support agenda item 73a on the Board's supplemental agenda. Passage of the Motion will provide important specific information about how the County can develop and expand the decentralized community-based system of care to enable the diversion of people with mental illness and co-occurring disorders. We strongly support the motion because of its explicit commitment to ensure that efforts to reduce the County jail population be expanded beyond people with mental illness and co-occurring disorders, to include those with substance abuse disorders generally, those being held in jail pretrial, and those in general population. Finally, we grateful for the Motion's express goal of finding options to reduce or eliminate the need to build additional custody capacity while still allowing for the demolition of Men's Central Jail. For more than ten years, the ACLU and others has been calling for the demolition of Men's Central Jail while also urging that the County take the opportunity to commit to a dramatic reduction of the jail population rather than simply looking to build replacement facilities. *See* Margaret Winter and Peter Eliasberg, The 35th Anniversary of Rutherford, LA Daily Journal (Dec. 27, 2010); Melinda Bird and Margaret Winter, LA's Central Problem, LA Daily Journal (Apr. 27, 2009). Option 1 in the CEO's August 7, 2019 report back to the Board demonstrates the feasibility of closing Men's Central Jail, investing in diversion and community placements, and not building new custody beds.

We urge the Board to make one amendment to the proposed motion. While we welcome the flurry of activity directed at remaking the County's criminal justice system, it is important that that work be well-coordinated and pointed in the same direction. Thus, we request that the directives in the Motion be amended to specifically require coordination between the county

agencies and the final report and recommendations of the Alternative to Incarceration Work Group and, that any report backs required by the Motion that occur before the final ATI report be later amended to reflect relevant portions of the report.

We also urge the Board take immediate steps to set aside funding so that it can expeditiously implement the recommendations in the report backs required by this Motion and those that will be set forth in the final report of the Alternatives to Incarceration Work Group, and the diversion Road Map the Board called for in its August 2018 Motion.

3. Care for Individuals in Custody Who Are Experiencing Serious Mental Illness

We also support the Motion Care for Individuals in Custody Who Are Experiencing Serious Mental Illness for numerous reasons but also believes certain amendments are called for.

First, for more than ten years we have been calling for the closure of Men's Central Jail and the expansion of alternatives to incarceration for a variety of reasons including a variety of inhumane conditions. *See* Margaret Winter and Peter Eliasberg, The 35th Anniversary of Rutherford, LA Daily Journal (Dec. 27, 2010); Melinda Bird and Margaret Winter, LA's Central Problem, LA Daily Journal (Apr. 27, 2009). Second, in recent comments to the Board relating to the presentation of the interim report of the Alternatives to Incarceration Work Group, we urged the Board to set aside funds to enable it to implement the upcoming recommendations from the ATI Work Group that will be in its final report. Thus, we support the Motion's provision for a report back on how funds currently allocated for the MHTC can be used to, among other things, "build out the continuum of care and alternatives to incarceration." Finally, we support the amendments to the motion calling for the reconstituted working group be expanded to include the head of the ATI work group and other stakeholders. One of the essential components of the ATI work group has been broad participation by community stakeholders, and it is important that the executive working group called for in this motion include non-governmental stakeholders.

We urge that the Motion be amended in two ways. First, it should provide that the executive working group be headed not by the CEO, but either the heads of the health agencies, or the director of ODR. The focus of the work group on diversion and systems of care makes the health agencies or ODR far better placed to direct the work group than the CEO. Moreover, the recent proposal by the CEO for a 2,400 bed custody facility and 900 bed MHTC reflects a failure on the part of the CEO either to understand, or a reluctance to fully implement, the Board's vision as set forth in its February 12, 2019 motion rejecting CCTF and calling for a "care first, jail last" approach. The head of the executive working group must be completely aligned with the Board's vision. Second, we request that directive 3a in the motion be amended by deleting the words "and the replacement of Men's Central Jail." Option 1 proposed by the health agencies in the CEO's August 7 report back demonstrates the potential feasibility of demolishing MCJ and investing in diversion, community beds and placements, and other criminal justice reforms, thereby obviating the need for an MCJ replacement. Thus, the motion should not presuppose that an MCJ replacement needs to be built.

4. The Role of Consultants

Both agenda items 23 and 73a contemplate the use of consultants. Unfortunately, the County's prior use of consultants during the process that led up to the development of the plan for CCTF provide a cautionary tale of the harmful role consultants can play in the implementation of the Board's agenda. Specifically, both Vanir Construction and HMA Associates significantly downplayed any possibility of significantly reducing the number of people with mental illness in the jail, leading them to recommend building a large mental health jail -- an approach the Board has now wisely rejected.

Specifically, Vanir opined that significant diversion was not possible because there was a lack of treatment capacity in the community, instead of exploring the possibilities of diversion if the County committed to the expansion of community-based capacity as the Board now appears poised to do. Vanir's conclusion that significant diversion was not feasible was one of the key components underlying its proposal that the County build a large mental health jail, which previous Boards unfortunately agreed to do.

HMA Associate's "analysis" of the possible scope of diversion was similarly stunted. For example, HMA concluded that the people in jail with the most acute mental illness would not be appropriate for diversion. This conclusion was fundamentally flawed because it equated severity of mental illness with dangerousness, when the two are not linked. Indeed, ODR has been very successful safely moving people with most acute mental illness into community placements. Specifically, its MIST and FIST programs move people found incompetent to stand trial and charged with both misdemeanors and felonies into community-based settings for restoration of competency and then moving them into other community-based placements when their criminal matters are resolved. Yet, people found incompetent to stand trial are among the *most acutely mentally ill* people in the whole jail system, demonstrating the misguided nature of HMA's analysis. In addition, as the Motion by Supervisors Hahn and Ridley-Thomas acknowledges, a study by ODR has determined that 56% of the people with mental illness in the jail are appropriate candidates for diversion into community placements, a figure far larger than the one proposed by HMA.

Overall, the reports from both Vanir and HMA Associates were deeply flawed in ways that supported a "jails first" approach to Los Angeles County's criminal justice needs and were instrumental in justifying the CCTF proposal the Board has now wisely rejected. However, too many years were wasted pursuing an extremely expensive and misguided project before the County's recent shift in direction.

Moving forward, if the County hires consultants for the work called for in agenda items 23 and 73a, the Board should take aggressive steps to ensure that any consultant hired understands the Board's profound commitment to "care first, jail last" and dramatically reducing the size of the County's jail population.

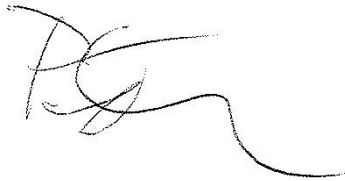
Conclusion

We are grateful to the Board for its commitment to dramatically restructuring the criminal justice system in Los Angeles, under which we have the sad distinction of being the largest jailer in the

country and the jails function (poorly) as the largest mental health facility in the country. We urge the passage of agenda items 14, 23 and 73a with amendments as important steps towards implementing the Board's commitment.

Sincerely,

Peter Eliasberg
Chief Counsel

A handwritten signature in black ink, appearing to be 'PE', with a long horizontal flourish extending to the right.

ACLU Foundation of Southern California
Critical Resistance Los Angeles
CURB
Frontline Wellness Network
JusticeLA
JustLeadershipUSA
Million Dollar Hoods
Youth Justice Coalition