



Board of Supervisors COUNTY OF TULARE AGENDA ITEM

BOARD OF SUPERVISORS

KUYLER CROCKER
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

EDDIE VALERO
District Four

DENNIS TOWNSEND
District Five

AGENDA DATE: April 14, 2020

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>

CONTACT PERSON: Samantha Ferrer PHONE: 559-636-5000

SUBJECT: Opposition to the early release of offenders due to the threat of COVID-19

REQUEST(S):

That the Board of Supervisors:

1. Go on record in opposition to the early release of offenders due to the threat of COVID-19; and
2. Direct staff to send appropriate letters to the California Judicial Council and other state and local officials stating the Board's opposition to such releases.

SUMMARY:

On March 11, 2020, Tulare County's Local Health Officer proclaimed and declared that a local health emergency now exists in the County of Tulare due to the presence of and threat posed by COVID-19.

The Tulare County Board of Supervisors unanimously ratified this proclamation at its regular meeting of March 17, 2020 and has taken all steps to implement and support that determination.

On April 6, 2020, in response to the COVID-19 pandemic the Judicial Council of California issued Emergency Rules that in effect directed that potentially dangerous inmates must be released from the Tulare County jail on \$0 bail without regard to the threat they may pose to the victims and the general public.

To date, there are confirmed 168 positive cases of infection in Tulare County, with 7 deaths. From all publically-available information, none of the deaths has involved Court, law enforcement, jail personnel, or jail prisoners. The County continues to

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implement robust plans and procedures to keep jail inmates safe from the virus and any other threats to their health that may occur. Through these efforts, the County has protected the public health, while also protecting public safety by continuing to incarcerate inmates serving out their local sentences or determined to be too dangerous to release pending trial or other disposition of their cases. In ordering the release of pretrial detainees at \$0 bail, the Emergency Rules adopted by the Judicial Council usurp local decision-making and strike the wrong balance between public health and public safety.

Other actions have apparently been taken at the local level to release offenders from the jail due to the threat of COVID-19 infection. Staff is seeking additional information about these releases and their potential impact on public safety, and will provide any updates on this developing situation at the Board meeting.

A draft letter to the Judicial Council regarding its Emergency Rules is attached for the Board's review and approval. At the Board's direction, similar letters can be sent to other state and local officials expressing the Board's opposition to the early release of offenders.

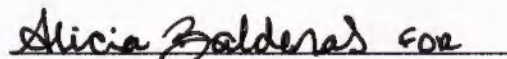
FISCAL IMPACT/FINANCING:

There is no Net County Cost to the General Fund.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Approval of letters of opposition regarding the early release of offenders due to the threat of COVID-19 is directly linked to the Safety and Security initiative - provide adequate facilities for protection of the public and effectively and fairly investigate, arrest, prosecute and punish individuals who engage in criminal behaviors.

ADMINISTRATIVE SIGN-OFF:


Samantha Ferrer
Board Representative

cc: County Administrative Office

Attachment Letter of opposition to the California Judicial Council;

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF OPPOSITION TO)
THE EARLY RELEASE OF OFFENDERS) Resolution No. _____
DUE TO THE THREAT OF COVID-19)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

That the Board of Supervisors:

1. Went on record in opposition to the early release of offenders due to the threat of to COVID-19; and
2. Directed staff to send appropriate letters to the California Judicial Council and other state and local officials stating the Board's opposition to such releases.

April 14, 2020

Chief Justice Tani G. Cantil-Sakauye, Chair, and
Members, Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Emergency Rules in Response to COVID-19 Pandemic

Dear Chief Justice and Members:

As elected representatives of the County of Tulare, we are writing to express our opposition to certain aspects of the "Emergency Rules" issued by the Judicial Council ("JCC") on April 6, 2020 in response to the COVID-19 pandemic. While we understand and appreciate the JCC's intent and its need to assist our local courts in managing their affairs during the unprecedented COVID-19 pandemic, we believe the JCC's Emergency Rules did not strike the right balance between public health and public safety, at least in Tulare County.

By way of background, on March 11, 2020 Tulare County's Local Health Officer proclaimed and declared that a local health emergency now exists in the County of Tulare due to the presence of and threat posed by COVID-19. The Tulare County Board of Supervisors unanimously ratified said proclamation at its regular meeting of March 17, 2020 and has taken all steps requested by the County Health Officer to implement and support that determination. To date, there are confirmed 168 positive cases of infection in Tulare County, with 7 deaths. From all publically-available information, none of the deaths has involved Court, law enforcement, or jail personnel, or jail prisoners. In fact, the County and Tulare County Sheriff Michael Boudreaux have and continue to implement robust plans and procedures to keep our jail inmates safe from the virus and any other threats to their health that may occur. Through these efforts, the County has protected public health while also protecting public safety by continuing to incarcerate inmates serving out their local sentences or determined to be too dangerous to release pending trial or other disposition of their cases. It is important to note that our local jails are not overcrowded and so do not pose the COVID-19 health risks to prisoners and staff that are alleged to exist in other correctional facilities.

Despite the success of our local efforts to protect both public health and public safety, by its Emergency Rule 4 the JCC has usurped local decision making and decided that potentially dangerous inmates must be released from our jail on \$0 bail without regard to the threat they may pose to their victims and the general public. Rule 4 establishes a statewide "Emergency Bail Schedule" and commands all superior courts to apply that schedule by 5 p.m. on April 10, 2020 to every accused person arrested and in or held in

pretrial custody within their counties. Under the "Emergency Bail Schedule, cash bail for all misdemeanors and felonies must be set at \$0, with specified exceptions.

We believe there are serious problems with aspects of Emergency Rule 4. First, the April 10 deadline provides too little time for the Courts and its criminal justice partners to properly assess each case and make appropriate recommendations/decisions about bail and/or release. More time must be given to permit all parties to do their due diligence before mass jail releases take place. Secondly, Rule 4's enumerated exceptions to the Emergency Bail Schedule should have included the offenses detailed in correspondence from the California District Attorneys Association, to wit:

- **Human Trafficking for labor purposes, Penal Code section 236.1(a).** Although this crime is not contained within the definitions of a serious or violent offense, a defendant should be required to post bail as the crime is typically committed against a vulnerable victim – those who may be undocumented immigrants and are likely to be subject to further intimidation or dissuasion;
- **Child abuse and endangerment, Penal Code sections 273a (a), 273a (b), and 273d.** The crimes of child abuse and child endangerment are similar to intimate partner violence and during this emergency the welfare of children as vulnerable victims must be paramount importance. These crimes, whether misdemeanor or felony should require the posting of bail and/or a magistrate making a decision based on the safety of the victim(s) before a defendant should be released from custody; and
- **Elder Abuse, Penal Code section 368.** The crime of elder abuse is of particular importance during this state of emergency. These victims are particularly vulnerable and may be subject to further victimization, intimidation, or dissuasion. These crimes, whether misdemeanor or felony should require the posting of bail and/or a magistrate making a decision based on the safety of the victim(s) before a defendant should be released from custody.

Additionally, Rule 4 should be amended to consider the vulnerability of our small businesses during this pandemic. Businesses have closed in order to comply with State and Federal mandates, not only leaving them in precarious positions financially, but also leaving their physical brick and mortar businesses vulnerable to vandalism and burglaries. Property crime on its face is not considered violent, however our local law enforcement and prosecutors need the ability to analyze and assess the risk to our community when a repeat offender is arrested for commercial burglary, released without bail, and then re-arrested the next day for the exact same offense. Such quality of life crimes are crimes that eat away at the well-being and fabric of our communities; but now, more than ever, we have to consider the impact that theft and vandalism can have on our businesses as they are teetering on the brink of extinction. It matters to them, it matters to their employees, and it needs to matter to the Courts and the entire criminal justice system as well.

We are asking that crimes committed while out on bail be considered under the same category as the excepted offenses so that our criminal justice partners can do everything they can to protect our community during this crisis.

Thus, under the list of excepted offenses, we strongly urge you to consider adding Penal Code Section 12022.1, which addresses crimes committed while a person is out of custody either on bail or his/her own recognizance. This allegation should apply whether or not the principal charge is listed as a serious/violent or otherwise excepted offense. It does not apply to misdemeanor cases.

Additionally, we recommend Rule 4 include an exception for repeat, chronic offenders who have either a history of failures to appear or violations of probation.

In the interests of preserving public safety, we request that the JCC revisit Emergency Rule 4 and amend it to provide discretion for our local judges, in concert with local prosecutors, Probation Officers, Public Defenders, and private and conflict defense counsel, to make individualized assessments of the both the public health threat posed by COVID-19 and the threat to public and victim safety posed by the release of pretrial detainees on \$0 cash bail. As presently written, Emergency Rule 4 would seem to be a prime example of a situation where one size *does not* fit all. Please restore to our local officials the tools they need to keep our communities truly safe in these uncertain times.

Respectfully,

Pete Vander Poel, Chair
Tulare County Board of Supervisors

Amy Shuklian, Vice Chair
Tulare County Board of Supervisors

Kuyler Crocker, District 1
Tulare County Board of Supervisors

Eddie Valero, District 4
Tulare County Board of Supervisors

Dennis Townsend, District 5
Tulare County Board of Supervisors

cc: Sheriff Michael Boudreaux
District Attorney Tim Ward
Public Defender Lisa Bertolino
Conflict Defender David Allen
Presiding Judge Brett Alldredge

DRAFT