

Work Group to Re-envision the Jail Replacement Project

Issue Brief: SIM Intercept 3

A. Background

The upcoming work group meeting on June 10, 2016 will focus on Intercepts 2¹ and 3 from the San Francisco Sequential Intercept Model (SIM). The Technical Support Team (TST) drafted this issue brief to provide additional information on Intercept 3 for the work group in preparation for the upcoming meeting.

Intercept 0: Community

Intercept 1: Law Enforcement and Emergency Services

Intercept 2: Initial Detention and Initial Hearing

Intercept 3: Resolution of Case

Intercept 4: Incarceration and Reentry Planning

Intercept 5: Reentry

This issue brief is intended to define Intercept 3, describe key intervention points, and articulate potential strategies for work group consideration. For more information about the SIM model, the work plan, or the series of issue briefs, please see the Work Plan Overview available on the work group's website at <http://bit.ly/JRPworkgroup>.

B. Intercept 3 – Resolution of Case

Work Group Goal: Reduce the number of unnecessary days spent in custody

Definition

Intercept 3 covers opportunities in the courts and jails subsequent to initial court appearances that facilitate safe pretrial exits from custody and support reentry into the community.

Key Events and Current Efforts

Several key services and processes in this intercept affect 1) who is released prior to case resolution and 2) how quickly the release occurs. This section outlines some of the current efforts employed within these services and processes to reduce the length of stay of pretrial individuals in county jail and decrease their likelihood of recidivism.

Jail Services. Incarcerated individuals housed in San Francisco's jail system are offered a variety of population specific, need based services in custody that are designed to stabilize and treat those with mental health conditions, decrease recidivism rates, and streamline reentry into the community. Services provided during Intercept 3 include

¹ Work group members were not provided with sufficient time at the May 13 meeting to fully address Intercept 2 in small group discussions. As a result, work group members will have an opportunity to finish their small group discussions on Intercept 2 at the June 10 meeting. The issue brief on Intercept 2 was previously distributed and is also available on the work group's website at <http://bit.ly/JRPworkgroup> (click on "Issue Brief" under "Meeting 3 (5/13/2016)."

- *Jail Behavioral Health Services* - Jail Behavioral Health Services² (JBHS) strives to provide high quality health care in San Francisco’s jails. Roughly 7-14% of those incarcerated in San Francisco have a serious mental illness³ and may be housed in specialized psychiatric housing units throughout the jail system to provide individualized services. JBHS also runs Jail Reentry Services (JRS), a program designed to work with the most vulnerable population in the jail to develop comprehensive reentry plans. JRS works closely with the jail staff and community providers to ensure continuity of care.
- *Educational, therapeutic, and reentry programs* – The Sheriff’s Department runs a variety of programs throughout the City’s jail system including Five Keys Charter School (for those who do not have a high school diploma), Community of Veterans Engaged in Restoration (run by Swords to Plowshares for veterans), Roads to Recovery (focuses on substance use treatment), Resolve to Stop the Violence Project (a violence intervention and prevention program), Keys to Change (focuses on restorative justice and cognitive behavioral therapy), Sisters in Sober Treatment Empowered in Recovery (focuses on substance abuse treatment and behavior modification for women), and One Family (provides parenting classes and parent child contact visits). The Sheriff’s Department and Adult Probation also collaboratively run the Reentry Pod (focuses on behavioral/skill development and pre-release reentry planning). These programs maintain waitlists that are generated by incarcerated individuals through action requests and referrals from the Courts, Adult Probation, and Sheriff Department staff.

Collaborative Courts. The City has a number of “collaborative” or “problem-solving” courts – Behavioral Health Court, Drug Court, Intensive Supervision Court, Veterans Justice Court, Young Adult Court, and the Tenderloin-based Community Justice Court – that strive to address the underlying issues affecting an individual’s criminal behavior and seek to decrease overreliance on incarceration. In these specialized courts, judges, prosecutors, defense counsel, probation and service providers work together to develop individualized service and supervision plans that hold defendants accountable while supporting them to address barriers and exit the justice system with optimal legal outcomes and ongoing supportive structures. Current efforts are underway in San Francisco’s justice system to implement new eligibility criteria that will enable more individuals to participate in these courts.

Sentencing Planner Program. The District Attorney’s Sentencing Planner Program (SPP) is comprised of social workers with expertise in evidence-based programs to address criminogenic needs and detailed knowledge of the programs and services available in San Francisco. Prosecutors refer cases to the SPP in the early stages of prosecution. The SPP conducts in-depth case review to determine if alternatives to incarceration are appropriate for the defendant, and provides a written report with detailed recommended dispositions including length and type of supervision, education requirements, vocational training requirements, and rehabilitation and behavior adjustment programs. The prosecutor decides whether to incorporate the SPP recommendations into their final

² Behavioral Health Services is an overarching term to address the service delivery of integrated treatment for individuals with mental health and/or substance use disorders. The Substance Abuse and Mental Health Services Administration (SAMSHA) defines a Serious Mental Illness (SMI) as a diagnosable mental health disorder that significantly impacts an individual’s functioning in daily life, whereas a Substance Use Disorder (SUD) is defined as recurrent use of a substance that impacts an individual’s functioning in daily life and/or health problems.

³ SAMSHA estimates that 4-5% of the general population has a serious mental illness (SMI) diagnosis, while 14-24% of individuals with criminal justice involvement have an SMI diagnosis. Based on 2015 data, the rate of SMI in the San Francisco jail is somewhat lower in comparison (7-14%).

disposition. The SPP is increasingly being used to develop pre-trial release plans for individuals who would otherwise remain in custody during the resolution of their case.

Traditional Court processes. Three of the ways the City's court processes play a role in affecting the length of stay of incarcerated people are discussed below.

- *Calendaring* – Judges or judicial officials frequently decide whether a given individual will be released from custody and under what circumstances. In many cases, the first opportunity that an incarcerated individual has to be released by a judge is at arraignment (which must take place within 48 hours of booking, not including holidays and weekends). Arraignment calendars are currently scheduled for 1:30pm on weekdays at the Hall of Justice.
- *Paperwork* – Adult Probation staff is required to complete certain paperwork (e.g., Supplemental Reports for incarcerated individuals held on motions to revoke) before post-arraignment hearings can be scheduled before a judge.
- *Out-of-county warrants* – If a given incarcerated individual has an out-of-county warrant, the City's Sheriff's Department is required by law to notify the issuing jurisdiction that the individual is in its custody and is ready to be picked up. For jurisdictions within 400 miles of San Francisco, the Sheriff's Department holds the individual for five days. For jurisdictions more than 400 miles from San Francisco, the Sheriff's Department holds the individual for seven days.

Potential Strategies

The Technical Support Team developed a short list of potential strategies relevant to this intercept. The list below is not comprehensive, and the potential strategies mentioned are not necessarily endorsed by the Technical Support Team. The list is intended only to prime discussions about what strategies group members think should be the focus of further consideration and research.

Create a discharge planning office in County Jail #1. While there are many efforts to develop reentry plans for incarcerated individuals currently in existence, many incarcerated individuals do not exit custody efficiently because there is no single party responsible for developing a clear discharge plan and coordinating their exit with warm hand-offs to relevant service agencies (particularly when the release is unexpected). Creating a discharge planning office that begins planning for an incarcerated individual's exit immediately (i.e., upon booking in County Jail #1) could help to reduce the number of unnecessary days a person spends in custody.

Ongoing review of eligibility for release. As discussed in the issue brief on Intercept 2, individuals may be released from custody prior to the resolution of their cases on bail or on promise to appear. Currently, eligibility for release is determined at arraignment, and can be reconsidered by a judge or magistrate upon motion of the defense, but, in practice, such reconsideration of eligibility for release does not occur continuously and consistently as cases change and new information comes to light. Using the Public Safety Assessment and bail motions to review eligibility for release at more frequent and standard intervals could result in more exits from jail.⁴

Expanding availability of on-demand housing and treatment options. It is difficult for individuals exiting the criminal justice system to access on-demand housing and treatment options, which may result in increased risk of recidivism or may extend their length of stay in jail while awaiting treatment/housing options. Expanding the City's treatment options and stable and supportive

⁴ The feasibility of this recommendation may depend on Pretrial Diversion's capacity to assess eligibility for release more often.

housing capacity could help to reduce the number of unnecessary days such individuals spend in custody. Some ideas for expanding the City's housing capacity include

- Subsidizing a program offered by the Adult Probation Department to financially support families that are willing to take in homeless individuals exiting custody
- Creating cooperative housing for those exiting custody that are homeless but do not need residential treatment
- Using empty City lots for affordable housing construction
- Assessing the need for Board and Care options and whether these facilities could be subsidized or if the operation of a Board and Care could be otherwise incentivized by the City.

Increasing efficiency of traditional and nontraditional Court processes. There are operational barriers in the City's court systems that either delay or derail exits from custody or contribute to an overreliance on incarceration. Court efficiency could be increased in several ways, including

- Holding arraignments calendars in the morning and on weekends to reduce the amount of unnecessary time some individuals spend in custody waiting for this initial hearing⁵
- Creating a walk-on calendar for persons with bench warrants to reduce bookings for these warrants. Bench warrants are issued when a defendant fails to appear in court for their case and signal to the police that the person should be arrested. A walk-on calendar would allow those who have previously failed to appear to easily schedule motions to recall their bench warrants and reduce bookings on these types of warrants.
- Simplifying the Supplemental Report process that is required by the Adult Probation Department for all those held in custody on motions to revoke probation. Court hearings are delayed for these people until this process is completed.
- Screening for out-of-county warrants to share information with the Public Defender at arraignment so attorneys can start working on clearing such warrants as soon as possible.
- Sharing staff between all collaborative courts to track availability of support services and coordinate with service providers to direct court participants as appropriate to available housing, treatment, or peer support opportunities.

Expanding opportunities for nontraditional case resolution. Expansion of the use of the collaborative courts, as well as other problem-solving strategies, could further decrease overreliance on incarceration. Ideas for expanding nontraditional case resolution include

- Expanding formal supervision courts for probationers to identify those that are just about to have their probation revoked and proactively work to determine what else could be done instead of returning an individual to custody.
- Exploring possible policy changes that encourage prosecutors to make plea offers for non-violent crimes that do not include jail time.
- Increasing the capacity of the Sentencing Planner Program at the District Attorney's Office to provide their services in more cases.⁶
- Creating a conservatorship court⁷ to support individuals with complex behavioral health needs (who meet criteria for a Lanterman Petris Short (LPS) Conservatorship under Welfare and Institutions Code § 5350) to receive treatment in the least restrictive environment. This program would strive to enhance successful integration of clients in the community, improve quality of life for these individuals, provide intensive community

⁵ Average daily population data from the Sheriff's Department indicates that, on average, there were 14 fewer people in jail on Tuesdays than on Mondays in 2014.

⁶ See page 2 for more information on the services currently provided by the Sentencing Planner Program.

⁷ Conservatorships are a civil court process and do not require a criminal court case.

support and outreach to support stability, and reduce the likelihood of future hospitalization.

Ideas from Work Group Member Interviews

Of the 33 members interviewed, 20 offered ideas on expanding access to community behavioral health services and on-demand housing for those in custody and six offered ideas on improving the efficiency and effectiveness of traditional and collaborative court processes. Some ideas relevant to Intercept 3 are listed below.

Expand residential treatment beds. On May 26, 2016, a total of 37 participants in the collaborative courts were in custody because they were awaiting residential treatment beds.

Prioritize access to residential treatment beds for individuals involved with the criminal justice system. Individuals wait in custody for two weeks to a month on average for a residential treatment bed to become available.⁸ This wait time could be decreased if incarcerated individuals were allowed priority access to residential treatment services.

Provide incentives to participate in the collaborative courts. Participation in the collaborative courts is entirely voluntary, and defendants often find that they can resolve their cases more quickly through the traditional court system. Providing incentives to increase the likelihood that defendants will elect to seek treatment through collaborative court processes could help to reduce recidivism.

Extend court hours or increase relevant staffing to decrease time to disposition. On average, cases take more time to resolve in San Francisco than in comparable California counties.⁹ Extending court hours (e.g., night court) or increasing staffing for the Public Defender, District Attorney, and/or Courts could decrease time to disposition.

Other Considerations

In the process of developing potential intervention strategies, the Technical Support Team discovered several areas in which more information was needed but not available. Further research into these areas could yield additional promising intervention strategies.

- What is the process for determining the bail schedule? What is the process to lower bail amounts? How does San Francisco's bail schedule compare to other jurisdictions?
- Why do criminal cases in San Francisco tend to take more time to resolve than criminal cases in other California counties? What changes, if any, could be made to reduce time to disposition?

⁸ Source: slide 9 from Behavioral Health Services' presentation at the April 8, 2016 meeting of this work group.

⁹ Table 10a of the Judicial Council of California's 2015 Court Statistics Report shows that, from fiscal year 2010-11 through fiscal year 2013-14, San Francisco consistently resolved fewer criminal cases within time standards (365 days for felonies and 120 days for misdemeanors) than the following California counties: Alameda, Contra Costa, Kern, San Joaquin, San Mateo, and Ventura.