



Mental Health Commission

CONSENT CALENDAR
July 25, 2023

To: Honorable Mayor and Members of the City Council
 From: Mental Health Commission
 Submitted by: Monica Jones, Chairperson
 Subject: Resolution to Adopt a City-Wide “Care First, Jails Last” Policy

RECOMMENDATION

Adopt a Resolution adopting a city-wide “Care First, Jails Last” policy that prioritizes the use and/or development of a continuum of care for individuals with mental illness, substance use, or co-occurring disorders rather than incarceration. Require City departments that have contact with the public to revise policies, procedures, and practices to reflect this priority and policy resolution. Require City Council to use this priority and policy resolution to inform budgetary priorities.

SUMMARY

Care First, Jails Last is a policy that is used nationwide – prioritizing the care of persons with mental illness and/or substance use disorders who allegedly commit crimes over their incarceration. In fact, in 2021, the Board of Supervisors for Alameda County adopted a similar “Care First, Jails Last” resolution, establishing a taskforce to create policies, procedures, and practices consistent with the resolution. The City of Berkeley needs to join Alameda County and other jurisdictions nationwide (like Los Angeles) in adopting a “Care First, Jails Last” policy resolution because (1) not all of the City’s Mental Health funding comes from the County so having its own resolution will ensure that the City will also follow a Care First, Jails Last resolution like the County of Alameda regardless of funding sources; (2) a Care First, Jails Last resolution is necessary for the success of other programs already under way such as the Specialized Care Unit (which will treat those in mental health and/or substance use crises without police); and (3) following Care First, Jails Last policy will lead to more cost-effective and overall successful outcomes than incarceration.

(<https://www.apa.org/monitor/julaug03/alternatives>; <https://www.nami.org/Blogs/NAMI-Blog/March-2021/The-Cost-of-Criminalizing-Serious-Mental-Illness>)

At the May 15th Mental Health Commission meeting the Mental Health Commission passed the following motions on a revised version of the Care First, Jails Last Resolution:

Resolution to Adopt a City-Wide "Care First, Jails Last" Policy

M/S/C (Opton, Prichett) Motion to omit the last sentence preceding the subtitle "Background" on Page 2, that starts with "The Mental Health Commission and ends with Policies".

Ayes: Appel, Opton, Prichett, Kimber-Smith, Turner; Noes: None; Abstentions: None; Absent: Fine, Harrison, Jones.

M/S/C (Appel, Kimber-Smith) Motion to adopt this resolution with the omission on the one sentence.

Ayes: Appel, Opton, Prichett, Kimber-Smith, Turner; Noes: None; Abstentions: None; Absent: Fine, Harrison, Jones.

FISCAL IMPACTS OF RECOMMENDATION

There will be minimal fiscal impacts to the City of Berkeley in choosing to provide "care" over "jails." Indeed, the cost of the care for an individual in a crisis care center or other facility associated with care will not be billed to the City of Berkeley, but rather to Medi-Cal who finances treatment and services to our vulnerable and marginalized people. It is true that some of these care facilities only accept Medi-Cal (not private insurance); however, there are usually private insurance options available at other comparable facilities should this be needed. There may be minimal costs to the City in the form of staffing time so as to revise existing policies and procedures or to create new policies and procedures consistent with this resolution.

CURRENT SITUATION AND ITS EFFECTS

At this time, the City of Berkeley does not have its own established diversion program (or a plan for one) that provides care (non-incarceration) options for those who have allegedly committed crimes and are experiencing mental health and/or substance use crises. People who have mental illness and/or substance use disorders and who allegedly commit crimes are taken to Santa Rita Jail. Making things worse, Santa Rita has recent history of Americans with Disabilities Act (ADA) violations resulting from their treatment of people with mental health disabilities.

<https://www.justice.gov/opa/pr/justice-department-finds-alameda-county-california-violates-americans-disabilities-act-and-us> (finding that those with mental illness at Santa Rita Jail would be better served by community-based alternatives). Likewise given the significantly higher suicide rate at Santa Rita Jail than most jails, based on the Department of Justice investigation into Santa Rita Jail, the City of Berkeley should consider the potential risks of placing people at these facilities when there is opportunity to offer alternatives. <https://www.justice.gov/crt/case-document/file/1388891/download> p. 25 (noting that from 2015 through 2019, there were at least 14 suicides in the Santa Rita Jail, which equates to a rate of suicides that is more than twice the national average in other jails).

A diversion program might, for example, allow those with misdemeanors committed while in the midst of a mental illness and/or substance use crisis to be placed in a care facility instead of in the County Jail. Currently, the City of Berkeley has no established

arrangements with local crisis stabilization, detox, and withdrawal management centers or other care facilities that could serve in this diversion role. However, there are such options. The Mental Health Commission has been conducting site visits to some of these options, including Amber House, located in Oakland (close to the Berkeley border and 12 minutes from downtown Berkeley). The Mental Health Commission believes Amber House (and other facilities like it) have the potential of being an excellent alternative to jail if an agreement could be reached between the City and Amber House.

BACKGROUND

Alameda County’s “Care First, Jails Last” resolution has been effective since May 25, 2021, calling for a “just and equitable transformation of criminal justice, behavioral health, and wraparound services to reduce incarceration of people with mental illness, substance use, and co-occurring disorders in Santa Rita Jail.” Its 25-member body “charged with developing a county-wide implementation plan” has been meeting monthly for almost a year and a half. There is no clear “program” in place. There are budgetary priorities and draft plans. The approach uses that “Sequential Intercept Model” (SIM) approach which has been adopted by both the U.S. Department of Veterans Affairs and the Substance Abuse and Mental Health Services Administration (SAMHSA). This model is designed to look at various intercepts where “care” should be offered before or instead of “jail.” They include everything thing from arrest to sentencing to release in which mental health and/or substance use disorder supports could be offered to persons in need—thus placing care first when possible.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None

RATIONALE FOR RECOMMENDATION

The City of Berkeley has not historically aimed to provide care as an alternative to incarceration. By reimagining public safety, Berkeley can embrace care for our vulnerable and marginalized populations. Additionally, we must recognize that these types of contemporary approaches are designed to improve well-being and bring our city closer to achieving equity among diverse groups. This recommendation is not a radical approach; it is a humane and common-sense goal that has been adopted by cities such as Los Angeles and counties such as Alameda County.

Additionally, this proposed recommendation will assist Berkeley’s Specialized Care Unit (SCU), when it goes into operation, by providing options for the teams who will offer non-police responses to those having mental health and/or substance use crises. One of the obstacles the SCU will face in helping those who have experienced mental health and/or substance use crises is to find the services to support them in the long-run. This resolution will commit Berkeley to focus on services over enforcement and care over jails. It is essential to making our SCU successful.

Finally, this proposed recommendation will highlight that there is a spectrum of mental health and/or substance use crises responses beyond either a 72-hour involuntary commitment to a hospital (5150) or being left on the streets, which is too often the choice our officers face. Hopefully, even in non-criminal situations our officers will recognize there are multiple care options to assist all who need help, no matter what degree of treatment required.

ALTERNATIVE ACTIONS CONSIDERED

Initially, the Mental Health Commission reviewed one particular County program: the CARES Navigation Center that is designed to address those with mental illness and/or substance use disorder who commit misdemeanors. In this situation, we would have our police officers bring persons from the City of Berkeley, who meet these criteria for the CARES Navigation Center, to this destination and they would receive care as opposed to jail. However, there have been concerns raised with the efficacy of the CARES Navigation Center (including the distance to travel there from Berkeley). More importantly, though, the Mental Health Commission believes we must serve all of those with mental illness and/or substance use disorders – not just those committing misdemeanors pre-booking. Rather we must provide care at all stages of the incarceration process, including pre-detention all the way to post-release support. This is how the benefits of care will truly be felt in our society.

CITY MANAGER

The City Manager has no objections with the content and recommendations of the Commission's Report. Given staffing and data challenges, it will be preferable if the impacted departments (HHCS and BPD) work collaboratively with the Mental Health Commission to identify the most relevant data sources, as well appropriate reporting frequency and start time for implementation.

CONTACT PERSON

Jamie Works-Wright, MHC Secretary, HHCS, 510-981-7721
Monica Jones, Chairperson
Mary-Lee Kimber Smith, Vice Chairperson

Attachments:

1: Resolution to adopt a city-wide "Care First-Jail Last" Policy

RESOLUTION NO. ##,###-N.S.

RESOLUTION TO ADOPT A CITY WIDE "CARE FIRST, JAIL LAST" POLICY

WHEREAS the City Council of the City of Berkeley acknowledges the need to reduce the number of people with mental illness, substance use and co-occurring disorders in our jails; and

WHEREAS the City Council of the City of Berkeley acknowledges that it is critical that we provide quality, affordable, accessible, and compassionate community-based mental health and substance use treatment options in order to reduce the number of people with mental illness, substance use and co-occurring disorders in our jails; and

WHEREAS the fundamental goal of a "Care First, Jails Last" policy is to develop a continuum of care that includes a full spectrum of treatment and housing, including preventative and outpatient services, inpatient acute and subacute facilities, licensed board and care homes, and other wraparound support services so that people with mental illness, substance use, and co-occurring disorders have a full opportunity to receive and live stable lives; and

WHEREAS the City Council of the City of Berkeley, recognizes the importance of responding to unprecedented and sustained calls from community members and behavioral health and criminal justice reform advocates to end law enforcement responses to health and social services' needs; and

WHEREAS the Care First, Jails Last policy is consistent with the goals and mission of our Reimagining Public Safety and the resulting Specialized Care Unit; and

WHEREAS the Mental Health Commission, established pursuant to California Welfare and Institutions Code 5604 et seq, is composed of 10 to 15 members. Fifty percent of the board membership shall be consumers or the parents, spouses, siblings, or adult children of consumers, who are receiving or have received mental health services. At least 20 percent of the total membership shall be consumers, and at least 20 percent shall be families of consumers. Pursuant to Berkeley City Council Resolution No. 65,945-N.S.: "The Commission shall...Review and evaluate the community's mental health needs, services, facilities, and special problems...Advise the governing body and the local mental health director as to any aspect of the local mental health program"; and

WHEREAS the COVID-19 public health and financial crisis has further highlighted the need to move away from criminalization, and to reduce our jail population and provide people with mental illness, substance use and co-occurring disorders with safe and community-based services; and

WHEREAS reducing the number of people with mental illness, substance use and co-occurring disorders and providing a quality, affordable, accessible, and compassionate community-based behavioral health continuum of care are racial justice issues; and

WHEREAS incarceration and insufficient mental health and substance use disorder services disproportionately impact Black residents in Berkeley; and

WHEREAS individuals with serious mental illness, substance use and co-occurring disorders are more likely to return to jail, experience deteriorated health, and cycle through the criminal justice system than those without serious mental illness; and

WHEREAS community-based behavioral health and substance use services have been proven to reduce crime and recidivism; and

WHEREAS jails spend two to three times more money on adults with mental illness who require intervention than on those without the same needs, with little or no improvement to public safety or individuals' health; and

WHEREAS community-based care for mental illness and/or substance use disorder is less expensive and more effective than treatment offered in a jail setting; and

WHEREAS both incarceration and insufficient quality, accessible behavioral health care services are linked to shortened life spans for people with mental illness, substance use, and co-occurring disorders; and

WHEREAS the Care First, Jails Last policy has demonstrated success in other jurisdictions, including Los Angeles County, in reducing incarceration and poor health outcomes of people with mental illness, substance use, and co-occurring disorders; and

WHEREAS it is critical to ensure that implementing a Care First, Jails Last policy allows those with lived experiences with the criminal justice system to meaningfully inform the recommendations for what a new system can look like.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley, does hereby adopt a "Care First, Jails Last Policy" for just and equitable behavioral health care services and alternatives to incarceration that transform the city's systems of criminal justice, behavioral healthcare, and wraparound services including public benefits, social services, and housing to prioritize preventative, rehabilitative, health-focused programs; and

BE IT FURTHER RESOLVED that the work advancing the Care First, Jails Last policy must prioritize equity and inclusion frameworks in addressing racial, economic, and other disparities in the City of Berkeley's criminal justice, behavioral health, and wraparound support services systems; and

BE IT FURTHER RESOLVED that all the City of Berkeley's departments that have contact with the public, in particular Public Safety, Division of Mental Health and any other supportive services, shall revise existing policies and procedures and/or create new policies and procedures, to the extent necessary, so as to advance a Care First, Jails Last policy within one (1) year of the passage of this resolution and that these policies and procedures be publicly available online; and

BE IT FURTHER RESOLVED that the Division of Mental Health and the Berkeley Police Department take the recommendations of the Mental Health Commission into consideration with regard to facilities (such as the use of Amber House as a care facility) and other strategies for diversion; and

BE IT FURTHER RESOLVED that the work advancing the Care First, Jails Last policy shall be grounded in shared data from across the criminal justice, behavioral health, and other supportive services systems to the extent allowable by law; and

BE IT FURTHER RESOLVED that the Chief of Berkeley Police Department (BPD) shall publicly provide updates every three months for at least three (3) years (or longer if implementation is not complete) to the City Council as to (1) the revision of existing policies, procedures and practices and/or creation of new policies, procedures and practices to implement and advance the Care First, Jails Last policy; (2) the implementation of those policies, procedures and practices; and (3) aggregate data as to the number of transports to diversion locations, number of transports to jail, number of 5150s, and a listing of the services/places utilized for diversion, in an effort to uplift systemwide transparency and coordination; and

BE IT FURTHER RESOLVED that the Manager of the Division of Mental Health shall provide updates every three months for at least three (3) years (or longer if implementation is not complete) to the City Council as to the implementation progress of a Care First, Jails Last policy, specifically, (1) the revision of existing policies, procedures and practices and/or creation of new policies, procedures and practices to implement and advance the Care First, Jails Last policy; (2) the implementation of those policies, procedures and practices; and (3) any work being done to increase the number of or scope of providers in the City of Berkeley so as to increase the services available; and (4) any proposed new services and/or upgrades to existing services and the estimated costs to the City; and

BE IT FURTHER RESOLVED that in conjunction with adopting this "Care First, Jails Last" resolution, the City Council of the City of Berkeley directs a member of the Division of Mental Health to attend all the meetings of the Alameda County "Care First, Jails Last Task Force" and to report back to the Division of Mental Health on any opportunities or ideas about diversion from jails to care.

