

Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM:** Anthony Mata
Chief of Police

SUBJECT: INFORMED BAIL SETTING **DATE:** September 25, 2023
PILOT PROGRAM

APPROVED

Memo #2023-025

BACKGROUND

When an individual is booked into the Santa Clara County Jail, they are accompanied by two documents, the *Pre Booking Information Sheet* and the *Affidavit re Probable Cause and Bail Setting*. The *Pre Booking Information Sheet* provides biographic information, arrest details, the listed charges and their scheduled bail, and a catalog of the individual's possessions.

The *Affidavit re Probable Cause and Bail Setting* lists the arrest charges and their scheduled bail, the reasons for the stop, search, and arrest, and some contributing factors including, whether the suspect was armed, the suspect's level of cooperation, victim injuries, and any controlled substances. At the bottom of this form, there is an area with approximately 4½ lines that reads, "Threats to victim(s) or witness(es): including information leading you to believe that the defendant may injure the victim(s)/witness(es) (threats, prior violence, etc.) or may flee prior to a court appearance." Historically, these lines were used to articulate any request for increased bail.

In Santa Clara County, criminal bail schedules are established by the judiciary.¹ Similarly, the judiciary holds the power to modify bail. To inform this decision, magistrates review the *Affidavit re Probable Cause and Bail Setting* and a criminal history summary provided by Pretrial Services.

Through stakeholder meetings between the Police Department, District Attorney's Office, Santa Clara County Executive, judiciary, and Pretrial Services, staff developed a deeper understanding of what was needed by the judiciary to make the decision to deviate from the bail schedule. The 4½ lines with no instructions were insufficient to adequately express an ongoing threat to public safety or the likelihood of reoccurrence. Working collaboratively between the Police Department and the District Attorney's Office, the *Affidavit re Probable Cause and Bail Setting* was revised, and a new form entitled *Law Enforcement Risk / Mitigation Factor Worksheet* was developed. The intent of these forms is to inform the judiciary setting bail with factors to consider on risk or mitigation. These include public safety, flight, mental health, and substance abuse or drug use factors.

¹ https://www.sccourt.org/court_divisions/criminal/bail.shtml

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ANALYSIS

On October 1, 2023, the Department is beginning a pilot program to evaluate the effectiveness of the revised *Affidavit re Probable Cause and Bail Setting* and new *Law Enforcement Risk / Mitigation Factor Worksheet*.

All second watch patrol officers will use these new forms when booking individuals into Santa Clara County Jail. These forms will not be used outside patrol, on first watch, or on third watch during the pilot program. The pilot program will conclude on December 31, 2023, at which time either the revised *Affidavit re Probable Cause and Bail Setting* and new *Law Enforcement Risk / Mitigation Factor Worksheet* will be fully implemented throughout the Department, or second watch officers will revert to the original *Affidavit re Probable Cause and Bail Setting*. Additional information will be distributed via Department memorandum at that time.

Both forms will continue to be submitted via the Reports box in the Report Writing Room. In addition, both forms will be submitted to the Warrants Unit when placing an *Affidavit re Probable Cause and Bail Setting* on file.

Training for the new forms will be provided at second watch briefings on Tuesday, September 26, 2023 and Friday, September 29, 2023.

ORDER

Effective October 1, 2023, and until December 31, 2023, all second watch patrol officers will use the revised *Affidavit re Probable Cause and Bail Setting* and new *Law Enforcement Risk / Mitigation Factor Worksheet* when booking individuals into Santa Clara County Jail.



Anthony Mata
Chief of Police

AM:PH:SD

Attachment 1: *Affidavit re Probable Cause and Bail Setting*

Attachment 2: *Law Enforcement Risk / Mitigation Factor Worksheet*

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Attachment 1: Affidavit re Probable Cause and Bail Setting

AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE & BAIL SETTING

THE AFFIANT, A PEACE OFFICER FOR THE STATE OF CALIFORNIA (AGENCY) Santa Clara County Sheriff's Office,
STATES THAT ON (DATE) _____, (NAME) _____,
(DOB) _____ (PFN) _____ (CEN) _____ (ARREST TIME) _____ (BOOKING TIME) _____,
WAS BOOKED AT THE SANTA CLARA COUNTY JAIL ON THE FOLLOWING CHARGES:

| CT # | ON-VIEW CHARGE(S) | FELONY OR MISD | SCHEDULED BAIL |
|------|-------------------|----------------|----------------|
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- AGENCY CASE # _____
- HIGH OR LOW BAIL REQUEST (PC 1269C): OFFICER REQUESTING BAIL MODIFICATION AND MAGISTRATE REVIEW
- BAIL SET BY COURT BAIL SCHEDULE: TOTAL \$ _____
- BAIL SET BY MAGISTRATE: \$ _____, JUDGE _____

FACTS IN SUPPORT OF PROBABLE CAUSE TO ARREST/STOP:

INSTRUCTIONS: ON THE LINES BELOW, DESCRIBE WHAT FACTS LED YOU TO BELIEVE THE SUSPECT COMMITTED THE ABOVE OFFENSE(S). STATE REASONS FOR THE CONTACT, DESCRIBE ACTIONS OF THE SUSPECT, ADDRESSING THE ELEMENTS OF THE OFFENSE(S). IF RELYING ON 3RD PARTY INFO, DESCRIBE WHO CAN ESTABLISH PERTINENT FACTS.

ANSWER ALL QUESTIONS BELOW:

PROVIDE A DESCRIPTION FOR ANY BOX CHECKED "YES"

- WAS THE SUSPECT ARMED? NO YES _____
- DID THE SUSPECT ASSAULT ANY VICTIMS? NO YES _____
- WERE ANY VICTIMS INJURED? NO YES _____
- WERE THERE ANY THREATS TO VICTIMS/WITNESSES? NO YES _____
- THEFT CASES: WHAT TYPE OF THEFT AND APPROX. VALUE OF PROPERTY TAKEN _____
- CONTROLLED SUBSTANCES: TYPE & APPROX. AMOUNT _____

IF REQUESTING HIGH OR LOW BAIL (PC 1269C): DESCRIBE FACTS KNOWN ABOUT THE CRIME(S) AND THE SUSPECT THAT WOULD LEAD YOU TO BELIEVE THE SUSPECT IS A FLIGHT RISK AND/OR A RISK TO PUBLIC SAFETY IF RELEASED, OR THAT SCHEDULE BAIL IS INAPPROPRIATE (EX: KNOWN PRIOR CONDUCT, THREATS, WEAPONS, ENHANCEMENTS OR AGGRAVATING CIRCUMSTANCES). **PLEASE ALSO COMPLETE THE RISK FACTOR WORKSHEET.**

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNATURE OF AFFIANT, BADGE # AFFIANT/PRINT NAME DATE

Attachment 2: Law Enforcement Risk / Mitigation Factor Worksheet

LAW ENFORCEMENT RISK / MITIGATION FACTOR WORKSHEET

(ARRESTEE NAME) _____ (AKA) _____
(DOB) _____ (PFN) _____ (CEN) _____

INSTRUCTIONS: THIS WORKSHEET IS AN ATTACHMENT TO THE AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE AND SHALL BE COMPLETED IN INSTANCES WHEN LAW ENFORCEMENT WISHES TO CONVEY FACTS ABOUT THE SUSPECT TO THE REVIEWING MAGISTRATE IN SETTING OF APPROPRIATE BAIL, OR IN DETAINING THE SUBJECT, PURSUANT TO PC 1269C. PLEASE CHECK APPLICABLE RISK OR MITIGATION FACTORS AND EXPLAIN IN THE SPACES PROVIDED.

PUBLIC SAFETY RISK FACTORS:

- ARRESTEE IS A THREAT TO PUBLIC SAFETY OR A LIKELIHOOD OF RECURRENCE EXISTS BASED ON:

- HISTORY OF VIOLENCE:

- VIOLENCE IN THE CURRENT OFFENSE
- WEAPON OR FIREARM USED IN THE CURRENT OFFENSE
- ACCESS TO WEAPONS, FIREARMS, AMMUNITION, OR FIREARM PRECURSOR PARTS
- REGISTERED FIREARMS
- ONGOING ACCESS TO VICTIMS/WITNESSES
- OUT OF CUSTODY ON BAIL/S.O.R.P./O.R. _____
- ACTIVE RESTRAINING ORDERS _____
- ACTIVE WARRANT(S) AT THE TIME OF ARREST _____
- PRIOR SIMILAR CONDUCT _____
- REPEATED CONTACT WITH LAW ENFORCEMENT
- THREATS OR THREATENING BEHAVIOR (INCLUDING STALKING, 166, 273.6)
- ON PROBATION/PAROLE/PRCS

FLIGHT RISK FACTORS:

- _____
- PRIOR FAILURES TO APPEAR
 - CURRENTLY OUT OF CUSTODY ON PENDING CRIMINAL CASE(S)

MENTAL HEALTH FACTORS:

- HISTORY OF VIOLENCE TOWARD OTHERS DUE TO MENTAL CONDITION
- HISTORY OF ATTEMPTED SUICIDE
- SUICIDAL THOUGHTS OR IDEATION
- SELF-HARMING BEHAVIOR
- OTHER KNOWN MENTAL HEALTH INFORMATION _____

SUBSTANCE ABUSE, DRUG USE FACTORS:

- HISTORY OF SUBSTANCE ABUSE (ARRESTS, OR SELF-REPORTED)
- HISTORY OF ALCOHOL ABUSE (ARRESTS, OR SELF-REPORTED)
- CURRENT SUBSTANCE USE/ABUSE: YES NO UNKNOWN
- CURRENT ALCOHOL USE/ABUSE: YES NO UNKNOWN

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNATURE OF AFFIANT, BADGE # _____ AFFIANT/PRINT NAME _____ DATE _____

TO BE COMPLETED BY PRETRIAL SERVICES

- THE SUBJECT HAS MULTIPLE RECENT ARRESTS AND/OR CITATIONS ("HIGH FREQUENCY OFFENDER")
- CONVICTION FOR PRIOR SIGNIFICANT ADULT CRIMINAL CONVICTION _____

NUMBER OF MISDEMEANOR OFFENSES IN THE LAST 12 MONTHS _____
NUMBER OF FELONY OFFENSES IN THE LAST 12 MONTHS _____
NUMBER OF NON-ACTIVE RESTRAINING ORDERS _____