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CONTACTS:

Stephanie Campos-Bui  
Policy Advocacy Clinic  
UC Berkeley School of Law  
(510) 643-4624  
[scamposbui@clinical.law.berkeley.edu](mailto:scamposbui@clinical.law.berkeley.edu)

Alicia Virani  
Criminal Justice Program  
UCLA School of Law  
(310) 486-6907  
[virani@law.ucla.edu](mailto:virani@law.ucla.edu)

Rachel Wallace  
Policy Advocacy Clinic  
UC Berkeley School of Law  
(510) 642-7875  
[rwallace@clinical.law.berkeley.edu](mailto:rwallace@clinical.law.berkeley.edu)

**New Study Tracking Implementation of Landmark California Supreme Court Decision Finds Significant Work Still Needed to Fix the Ongoing Crisis of High Rates of Pretrial Incarceration in the State**

*A year and a half after the Humphrey decision ended the use of unaffordable cash bail, researchers find little evidence of change*

A [new report](#) released today by the Policy Advocacy Clinic at Berkeley Law and the Bail Practicum at UCLA Law provides a comprehensive look at the impact of *In re Humphrey* on the landscape of pretrial detention in the state. The report reaches a grim conclusion: that implementation of this decision is coming up short.

On March 25, 2021, the California Supreme Court ruled in *Humphrey* that setting bail at an amount that a person cannot afford to pay is unconstitutional. Heralded as a historic decision, attorneys, community members, and other stakeholders predicted that the *Humphrey* decision would lead to more people being released pretrial.

The impacts of this decision were being closely watched across California, but particularly in Los Angeles County, which has a mandate to reduce the jail population in an effort to support the closure of Men's Central Jail. Reducing the pretrial population is one way to achieve that goal, and yet post-*Humphrey*, the pretrial population in Los Angeles County has not decreased.

"Bail reform in California has been divisive to say the least. But with the *Humphrey* decision, many thought that we would finally see relief for Californians, particularly Black, brown, and indigenous people who are subject to targeted policing and more likely to be held pretrial," says Alicia Virani, director of the Criminal Justice Program at UCLA Law. "But we found that many judges are finding new ways to justify holding people pretrial and expanding the reach of the system."

Through qualitative and quantitative analysis of documents across all of California's 58 counties, the research team found that the promise of *Humphrey*, 18 months after it was decided, remains unmet. What has emerged through a review of copious data, correspondence, policies, news articles, and a statewide survey of defense attorneys is the following:

1. There is no evidence that *Humphrey* has resulted in a net decrease of the pretrial jail population in California;
2. There is no evidence that *Humphrey* has resulted in a decrease in bail amounts across California; and
3. There is no evidence that *Humphrey* has resulted in a decrease in the average length of pretrial detention in California.

According to Rachel Wallace, clinical supervisor in the Policy Advocacy at Berkeley Law, "All of the records and data we received point to the alarming conclusion that many judges are not following the mandates of the *Humphrey* decision. Greater transparency around judicial decisionmaking and increased efforts towards judicial training are key to ensure judges are following the *Humphrey* standards."

Rather, the report recommends structural and systemic change via the Judicial Council and the California Legislature to address age-old problems that plague pretrial decisionmaking. These recommendations include:

- Adopting and enforcing a statewide uniform zero dollar bail schedule
- Codifying a presumption of release in all cases
- Funding indigent defense in the earliest stages of a case (pre-arraignment)
- Funding jurisdictions to establish pretrial services agencies outside of law enforcement departments

"This report represents the first glimpse at implementation of the *Humphrey* decision across the state," says Stephanie Campos-Bui, assistant clinical professor of law in the Policy Advocacy Clinic at Berkeley Law, "If anything, we hope this report underscores for advocates, system actors, legislators, and judges that there is still a lot of work to be done to realize the promise of *Humphrey*."

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The Policy Advocacy Clinic at Berkeley Law is a non-litigation, interdisciplinary clinic primarily focused on ending wealth extraction through the practice of fees, fines, and restitution.

The Bail Practicum at UCLA Law is an experiential course in which students represent clients in felony bail hearings and engage in systemic policy advocacy related to issues of pretrial detention.