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FOR IMMEDIATE RELEASE

JULY 6, 2021

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Final California Budget Invests Another \$140 Million in Misguided Pretrial Program, Expands Law Enforcement

Sacramento, CA - Governor Newsom today signed into law the 2021-22 Budget Act, vastly expanding a failed, \$75M pretrial pilot program that fuels mass incarceration and invests in law enforcement. This is a striking flaw in a budget that otherwise puts in place many needed investments to support California families, youth, small businesses, and communities.

The urgency of fixing the state's broken pretrial system is undeniable. Keeping people in jail until trial--which can take months or years--harms individuals and communities, disproportionately impacting poor communities of color. Pretrial detention accounts for [3 out of 4](#) persons in our jails, and California has the [second-highest pretrial incarceration rate](#) nationally. This practice is antithetical to California's values of promoting economic justice, ending mass incarceration, and upholding the presumption of innocence.

But the Governor's investment in law enforcement, driven by law enforcement special interests and adopted with slight modifications by the Legislature, is tragically ill-conceived. It expands a failed two-year pilot program started in 2019 from 16 counties to all 58, and locks in \$70 million in annual state funding (plus \$70 million for start-up) with no meaningful evaluation or oversight. Under the pilot, probation departments conduct demonstrably biased "risk assessments" to assign pretrial individuals to various levels of surveillance and supervision including electronic monitoring and unlimited search and seizure.

[The state's data](#) compiled from the 16 pilot counties shows the pilots don't work.

- Fully 30% of the people under probation supervision were re-arrested during the pretrial period and 40% did not appear at a court hearing.
- Compare that to community-based pretrial support programs in Santa Clara, San Francisco, and Sacramento Counties with new arrest and failure to appear rates in the [low single digits](#).

The result: yet more mass incarceration. The program's high failure rate means thousands of Californians *who have not been found guilty of a crime* will be jailed for probation violations such as a battery problem with an ankle monitor, a missed appointment due to transportation, child care, or health issues, or dozens of other "technical violations." These unnecessary jailings do not protect public safety. Far from it, they harm individuals and entire communities as arrests quickly lead to missed work, lost jobs, family homelessness, and criminal records that are an obstacle to future

employment, ultimately harming community economic stability and public safety. Keeping people in jail longer harms our communities and makes individuals more likely to commit another crime.

The Legislature tried to mitigate the harm of the Governor’s plan. With clear understanding of the direct and peripheral economic devastation, especially to people who are poor, differently abled, and people of color, both the Assembly and Senate initially voted down the expansion and permanency of these allocations. We applaud their efforts. At the same time, it is deeply concerning that our highest elected officials felt it necessary to acquiesce in the final moments knowing that allocations in carceral departments supplants the growth of healthy, equitable, and restorative systems.

But many counties will take the path of least resistance and hand the programs to probation departments. County leaders could exercise their leadership and fund pretrial services through departments of health and social services, public defenders’ offices, and community-based organizations, all of which would provide social supports that reduce recidivism and help clients meet court requirements. Such leadership would improve community economic stability and public safety. But under pressure from California’s Judicial Council, which has a thirst for oversight power, and powerful labor unions representing probation employees, which have a narrow focus on expanding law enforcement jobs, most counties will default to funding probation.

Law enforcement job growth should not dictate the design of pretrial programs. Probation-related unions exerted maximum pressure on the Governor and Legislature to ensure their members would benefit from new pretrial funding. The effectiveness of their framing the debate as a simple labor issue shows that California has a long way to go toward racial and economic equity. **To preserve specific, narrowly-defined jobs, the state is sacrificing the jobs and livelihoods of tens of thousands of mostly Black and Brown people impacted by disproportionate law enforcement and mass incarceration, and the stability of their communities. The state--and the labor unions--are overlooking the potential for new, high-quality jobs in supportive services that will pay massive dividends in restoring community economic vitality and public safety.** Unions should invest in our communities, not in protecting law enforcement budget growth.

The passage of this \$140M budget item perpetuates a longstanding, narrow, and flawed definition of public safety—one that pits public safety against public health and economic prosperity. This zero sum approach picks winners and losers in our society--and it’s no surprise that the winners are those with money and power. A more enlightened, equity-based, evidence-driven approach would be a win-win for California. *We can* have communities that are equitable, safe, healthy, and prosperous for all of us!

The Legislature has begun to prioritize economic restoration in historically marginalized communities. Both houses’ ongoing efforts to put an end, once and for all, to money bail, the Senate’s “Compassionate California” resolution (SCR 18), and the California Supreme Court’s landmark decision requiring courts to consider ability to pay bail all align with the principles of the presumption of innocence, investment in care, and economic restoration. The Governor and Legislature missed an opportunity with this budget. **Going forward, they can still shift outcomes related to poverty, injustice, and government abandonment of marginalized communities.** But that can only happen if they partner with labor unions to empower and fund agencies instituted to repair historic and ongoing harm, not perpetuate it.

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