

FOR IMMEDIATE RELEASE

June 12, 2024

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)

### **Follow-up Study Tracking Implementation of Landmark California Supreme Court Decision Finds a Lack of Progress Towards Reducing Pretrial Incarceration**

A [new report](#) released today by the Policy Advocacy Clinic at Berkeley Law and the Criminal Justice Program at UCLA School of Law provides another comprehensive review of whether *In re Humphrey* is having its intended effect. 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 first report tracking *Humphrey*, "[Coming Up Short, The Unrealized Promise of \*In re Humphrey\*](#)" found that a year and a half after the decision, there was no evidence of a reduction of people in pretrial incarceration nor in median bail amounts. The researchers understand that a shift in culture in judicial decision-making can take time, and thus conducted this follow-up study to understand the impacts of implementation three years after the decision. Unfortunately, this report finds that still very little progress has been made.

The new report, "[Largely Unchanged: The Limits of \*In re Humphrey\* on Pretrial Incarceration in California](#)" finds that while there was some progress in the immediate aftermath of *Humphrey*, many counties are reverting back to pre-*Humphrey* rates of pretrial incarceration. Additionally, responses to a survey that was sent out to defense attorneys across the state show an increasing backlash from judges against the *Humphrey* decision, which in many cases can lead to greater pretrial detention. Nearly 40% of defense attorneys stated that judges do not consider *Humphrey* at all when making pretrial release decisions.

"It is frustrating to know that the California Supreme Court issued a decision three years ago that was meant to put an end to wealth-based pretrial incarceration, and yet we still see

wealth-based pretrial incarceration every day in our state,” says Alicia Virani, The Rosalinde and Arthur Gilbert Foundation Director of the Criminal Justice Program at UCLA Law. “Black, brown, and indigenous individuals continue to bear the burden of pretrial incarceration, which can have long-term collateral consequences for them, their families, and their communities.”

Because there has been little change in pretrial populations or median bail amounts, there continues to be active litigation across the state around the issue of pretrial detention. According to Stephanie Campos-Bui, assistant clinical professor of law in the Policy Advocacy Clinic at Berkeley Law, “Not only are judges misinterpreting *Humphrey* and issuing no bail orders in cases where such orders are unlawful, we are seeing significant backlash against the decision with some judges issuing no bail orders at the mere mention of *Humphrey*.” The report also found promising innovations within public defenders’ offices to continue to address the needs of the pretrial population without resorting to incarceration.

The new report also tracks whether there has been any progress on the recommendations made in the initial report. There has been little to no progress around implementing these recommendations, which were directed primarily at the Judicial Council and the state legislature. The ongoing analysis of the *Humphrey* decision and its implementation indicates that there must be a multi-pronged approach to ending wealth-based detention, and yet these two entities have not done much to institute systemic changes to ensure the promise of *Humphrey* is met.

According to Rachel Wallace, interim deputy director in the Policy Advocacy at Berkeley Law, “Our report indicates that we really shouldn’t think of *Humphrey* as the paramount effort for bail reform in California. Uplifting ongoing litigation efforts, while encouraging the Legislature and Judicial Council to comply with the decision and even to take further action, is key to ensuring pretrial justice for all Californians.”

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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 Pretrial Justice Clinic 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.