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'IT RESULTS IN MORE JUSTICE'



KARL MONDON — STAFF PHOTOGRAPHER

Carlie Ware, a Santa Clara County deputy public defender and director of the Pre-Arrest Representation and Review pilot program, speaks with defendant Belinda Barraza, 33, in court in San Jose in January.

New public defender program looks to even the playing field

In new initiative, defense attorneys fight routine jailing of nonviolent defendants who can't afford bail or a private attorney

By Robert Salonga
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SAN JOSE » On a recent afternoon in arraignment court in the Santa Clara County Hall of Justice, rows of men and women in jail-issued jumpsuits sat quietly while a judge made his way through a heavy caseload.

Defendants were called. Many had been appointed an attorney, usually from the Public Defender's Office, whom they'd met just a few moments before. In most cases, the defendant was sent back to jail — the attorneys had scant information that could be used to argue for release.

But on this afternoon, Belinda

Barraza was about to beat the odds. The 33-year-old, charged with drug possession and taking a car without the owner's permission, already had met with a deputy public defender in jail.

Her lawyer, Carlie Ware, challenged a recommendation that Barraza be held in lieu of \$25,000 bail — a sum that Barraza could not pay and that could mean indefinite incarceration as her case made its way through the system.

Ware argued that the basis of the bail recommendation — that

Barraza had failed to appear in past court cases — was a function of her client's homelessness. The lawyer also called out an error that had increased the recommended bail by \$10,000, faulting Barraza for 10 instances of failing to appear in court when there had been just three, involving multiple charges.

The last hurdle was convincing the judge that Barraza had a place to go where she could be reliably contacted; as Ware noted in an interview, it's hard

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to get court notices when your address and phone number keep changing. But she had that covered, too — minutes before the case was called, Ware was on the court phone, verifying with a relative of Bar-raza that her client had somewhere to stay.

The judge agreed to release her, with drug and alcohol conditions.

The decision — which took just minutes — may have seemed unremarkable. But for a jailed defendant to be released at arraignment, even for a nonviolent crime, is rare. Ware and a small group of colleagues are trying to change that and fight the routine jailing of defendants who can't afford bail or a private attorney.

Their work is part of a pilot program called Pre-Arrest Representation and Review, a county-funded initiative in which public defense attorneys and investigators meet with select defendants within 48 hours of their arrest.

“They say ‘flight risk,’ as if they are going to flee prosecution. Virtually none of our clients fit that,” Ware said. “When someone’s record looks flaky, it can be because they’re poor. My job is to point out when that instability is because they’re poor.”

Since the initiative began in October, Ware and her team have followed 63 defendants to arraignment and secured some form of release for 50 of them, or 79%. The team estimates that at least half of those decisions were the result of the lawyers’ early advocacy.

For now, Ware said, the program — which drew inspiration from a model used in San Francisco — is limited to bail-eligible defendants charged with felonies or misdemeanor domestic violence.

Dan, a 68-year-old South Bay barber who was arrested on suspicion of assault, is one beneficiary of the program. He had been taken into custody after breaking alcohol bottles with a closet rod during a dispute with younger roommates over noise at their apartment and said that “someone got scared and called police.”

“It was really mostly an in-house thing,” said Dan, who did not want his full name published out of privacy concerns.

His lawyers were able to show he had a “stable residence history and had been employed for five to six years,” Ware said. “We called the owner of the barbershop. We could



STAFF FILE PHOTO

Carson White, an attorney for the Santa Clara County Public Defender’s Office, speaks with her client Joaquin Hernandez, 52, and his translator as she argues in court for him to be considered for the Pre-Arrest Representation and Review pilot program in San Jose.

verify his employment, his residence, his ties to the county.”

Dan was released on his own recognizance. The pre-arrest legal team then worked with the D.A.’s Office to agree to a misdemeanor charge of disturbing the peace.

“I think what this does, it cleans out the process of keeping people who are supposed to be there and weeding out individuals like myself,” Dan said. “I could keep my livelihood. My car was parked in a street sweeping zone, so I dodged that bullet. It’s a whole lot of little things that added up.”

Raj Jayadev, director of the civil rights nonprofit Silicon Valley De-Bug, said the program helps mitigate the fact most poor defendants don’t meet their attorneys until arraignment. The organization, through its Community Release Project, has partnered with the public defender’s office to help freed defendants make their court dates.

“Defenders have been, by design, a lap behind. This gives them some ability to catch up quicker,” Jayadev said. “Charges don’t vanish when people get out. Besides living your life, you get to mount your defense.”

In Nicholas Sierra’s case, the program’s at-

torneys were able to get the charges against him dismissed entirely. A 28-year-old San Jose resident, Sierra was pulled over on Hamilton Avenue on Nov. 8 for having a tint cover that obscured his car’s license plate. He was on parole at the time for a 2013 rape conviction in Kings County; when officers searched his car, they found a single small-caliber bullet in the trunk and took Sierra to jail.

Attorney Carson White, a fellow in the Public Defender’s Office working with Ware’s team, worked on his case. Investigator Christian Carrillo visited Sierra before his arraignment, and after talking to him, contacted his father and brother. The brother, Lionel, an Army veteran who gave Sierra the car, told Carrillo that he must have missed the bullet when cleaning the car after visiting a firing range in New Mexico. He offered to travel to San Jose to clear his brother’s name.

At Sierra’s arraignment, after White presented this information, the judge dismissed the case.

“I was able to keep my stuff, my job, my housing and also avoid the drama of being in jail, and the possibilities there,” Sierra said. “I’m really grateful for what they were able to do and how quickly they

could do it.”

The case illustrates one of the central goals of the pilot program: helping people avoid jail stays borne out of a lack of money and legal resources and limiting the impact that prolonged incarceration can have on employment and housing — which can in turn lead to a cycle of court absences, bench warrants and more jail time.

“We’re trying to pump the brakes on this conveyor belt of incarceration,” White said, “and remind people in the courtroom that these people are members of this community.”

The pilot program is part of a broader movement to reform cash bail. In 2018, a landmark appellate case out of San Francisco, known as the Humphrey decision, ordered state judges to consider a defendant’s ability to pay when deciding bail.

The decision is under review by the California Supreme Court. That same year, state lawmakers passed Senate Bill 10, which would end cash bail, though the law has been halted pending a November ballot measure spearheaded by the state’s bail bonds industry.

The Santa Clara County District Attorney’s Office also is embracing the is-

sue.

“There are cases we disagree on, but a lot of cases we agree on, and let’s get those done,” Assistant District Attorney David Angel said. “This is about the short-term goal of increasing people who can be safely released, and then moving on to removing cash bail altogether.”

“The night someone is arrested for a crime, there’s a lot of chaos in their life, and releasing them in that exact moment is not doing anyone any favors,” he added. “Collaboratively, we can stabilize their life enough so they can be safely released.”

Still, even when the pilot works as intended, tidy resolutions can be elusive.

In some cases, for example, people served by the program have been ordered to rehab, only to stay in jail because of legal complications or logistical hurdles like a lack of available treatment beds.

It’s a reminder of the inertia they’re pushing against, lawyers for the program said. Nevertheless, the small victories they’ve achieved so far have been sweet — and accumulating.

“This has changed my entire view of how you can help as a public defender,” Ware said. “As public defenders, we are reactive, and this program is proactive. It results in more justice.”

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