
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

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Author: Hertzberg
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Consultant: SC

Subject: *Bail: Pretrial Release*

HISTORY

Source: American Civil Liberties Union of California
Anti-Recidivism Coalition
California Public Defenders Association
Californians for Safety and Justice
Ella Baker Center for Human Rights
Essie Justice Group
SEIU California
Silicon Valley De-Bug
Western Center on Law & Poverty

Prior Legislation: SB 163 (Hertzberg), amended but not referred to Committee (2016)
SB 210 (Hancock), failed passage on the Assembly Floor (2014)
AB 805 (Jones-Sawyer), Ch. 17, Stats. 2013
SB 210 (Hancock), failed passage on the Assembly Floor (2012)
SB 1180 (Hancock), failed passage on the Senate Floor (2012)

Support: American Academy of Pediatrics, California; American Friends Service Committee; Asian Law Alliance; Bend the Arc: A Jewish Partnership for Justice; Black Women for Wellness; California Attorneys for Criminal Justice; California Catholic Conference; California Coalition for Mental Health; California Latinas for Reproductive Justice; Center on Juvenile and Criminal Justice; Children's Defense Fund-California; Community Oriented Correctional Health Services; Contra Costa County Democratic Party; Contra Costa County Office of the Public Defender; Courage Campaign; Drug Policy Alliance; El Grupo; Fathers and Families of San Joaquin; Financial Justice Project in the City and County of San Francisco Office of the Treasurer & Tax Collector; Friends Committee on Legislation of California; Human Impact Partners; Hunger Action Los Angeles; John Burton Advocates for Youth; Marin County Office of the Public Defender; Monterey County Office of the Public Defender; Napa County Public Defender; National Association of Social Workers, California Chapter; Oakland Privacy; Peace United Church of Christ; People's Life Fund; Root & Rebound; Rubicon Programs; San Francisco Public Defender; San Francisco Senior & Disability Action; San Jose/Silicon Valley NAACP; Santa Barbara County Public Defender; Santa Clara County Public Defender; Solano County Public Defender's Office; Sonoma County Public Defender; Steinberg Institute; Tulare County Public Defender; Temple Beth El; UDW/AFSCME Local 3930; United Food &

Commercial Workers Union; Urban Peace Institute; Voices for Progress Education Fund; Western Regional Advocacy Project; Women's Foundation of California; Youth for Environmental Sanity; 9to5 Working Women; 325 private individuals

Opposition: Association for Los Angeles Deputy Sheriffs; Association for Deputy District Attorneys; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotic Officers Association; Golden State Bail Agents Association; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Riverside Sheriffs' Association; Speedy Bail Bonds; 8 private individuals

PURPOSE

The purpose of this bill is to reduce the amount of people held in pretrial detention because of the inability to afford money bail and to require each county to establish a pretrial services agency that meets certain specifications.

Existing law declares that a person shall be released on bail by sufficient sureties, except for:

- Capital crimes when the facts are evident or the presumption great;
- Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or
- Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released. (Cal. Const., art. I, section 12.)

Existing law prohibits excessive bail. (*Id.*)

Existing law states that in setting, reducing, or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. The public safety shall be the primary consideration. (Pen. Code § 1275, subd. (a).)

Existing law provides that in considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant. (*Id.*)

This bill repeals Penal Code section 1275.

Existing law authorizes a court, with the concurrence of the board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance. (Pen. Code § 1318.1, subd. (a).)

Existing law provides that at the time of issuing a warrant of arrest, the magistrate shall fix the amount of bail which in his judgment will be reasonable and sufficient for the appearance of the defendant following his arrest, if the offense is bailable. (Pen. Code § 815a.)

This bill repeals Penal Code section 1318.1.

Existing law provides that that an arrested defendant must be taken before the magistrate within 48 hours after arrest, excluding Sundays and holiday. (Pen. Code § 825, subd. (a).)

This bill specifies that if the arrest occurs on a Wednesday if the Wednesday is a court holiday, the defendant shall be taken before the magistrate no later than Friday, and if the Friday is a court holiday, the defendant shall be taken before the magistrate no later than Thursday.

Existing law authorizes the officer in charge of a jail or the clerk of the superior court to approve and accept bail in the amount fixed by the arrest warrant, schedule of bail, or an order admitting to bail in cash or surety bond and to issue and sign an order for the release of the arrested person and to set a time and place for the appearance of the arrested person in court. (Pen. Code § 1269b, subd. (a).)

This bill instead provides that the officer in charge of the jail or the clerk of the superior court may approve and accept an order authorizing pretrial release or admitting to bail and to issue and sign an order for the release of the arrested person and to set a time and place for the appearance of the arrested person in court.

Existing law states that it is the duty of the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council. (Pen. Code § 1269b, subd. (c).)

Existing law requires the countywide bail schedule to contain a list of the offenses and the amounts of bail applicable for each as the judges determine to be appropriate. If the schedule does not list all offenses specifically, it shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedule. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior court judge and commissioner in the county, and to the Judicial Council. (Pen. Code § 1269b, subd. (f).)

This bill repeals Penal Code section 1269b.

This bill provides that a person who is arrested and booked into jail for an enumerated violent felony shall not be considered for release until the person appears before a judge or magistrate for a hearing and states that a pretrial services report shall not be prepared unless the defendant requests a pretrial risk assessment and report.

This bill provides that for the following specified offenses, a pretrial services agency shall conduct a risk assessment on a person arrested and booked into jail but the person shall not be considered for release until he or she appears before a judge or magistrate for a hearing:

- A serious felony as defined, except for first degree burglary;
- Intimidating a witness under certain circumstances, spousal rape, domestic violence, or stalking;
- Domestic violence battery;
- Violation of a court order, if the person is alleged to have made threats to kill or harm, engaged in violence against, or gone to the residence or workplace of, the protected party; or
- Any felony committed while the person is on pretrial release for a separate offense.

This bill requires, except for when a person is arrested for specified crimes, a pretrial services agency to immediately upon booking conduct a pretrial risk assessment on the arrested person and prepare a pretrial services report with recommendations for conditions of release.

This bill provides that a person who is arrested and booked for a misdemeanor, who is not first cited and released with a signed promise to appear in court, shall be released by the pretrial services agency subject to signing a release agreement without further conditions.

This bill requires the pretrial services agency to transmit the report with recommendations for conditions of release to the court and requires the court to issue an oral or written order to release the person, with or without release conditions, subject to the person signing a specified release agreement.

This bill states that if the pretrial services report is not available, the court shall release the person subject to a release agreement without further conditions or subject to conditions.

This bill provides that the fact that the court has not received the pretrial services report shall not preclude pretrial release.

This bill authorizes the court in which the charge is pending, upon petition by either party that there has been a change in circumstances, to amend the release order to impose different or additional conditions of release at the time of arraignment.

This bill authorizes court commissioners to order the pretrial release of arrested persons prior to arraignment.

Existing law authorizes a court to release a person who has been arrested for, or charged with any offense other than a capital offense, on his or her own recognizance. (Pen. Code § 1270.)

Existing law requires a person arrested for a misdemeanor to be released on his or own recognizance unless the court makes a finding on the record that there is no condition or combination of conditions that would reasonably ensure public safety and the appearance of the defendant as required, an own recognizance release will compromise public safety or will not reasonably ensure the appearance of the defendant. Public safety shall be the primary consideration. If the court makes one of those findings, the court shall then set monetary bail and specify the conditions, if any, under which the defendant shall be released. (*Id.*)

This bill repeals Penal Code section 1270.

Existing law authorizes a court to release a person on bail in an amount that is more or less than the amount contained in the bail schedule, or release the person on his or her own recognizance after conducting a hearing in open court. If bail is set in an amount that is different from that contained in the bail schedule, the judge or magistrate shall state the reasons for that decision on the record. (Pen. Code § 1270.1.)

This bill repeals Penal Code section 1270.1.

Existing law requires an automatic review, not more than five days from the original order fixing the bail amount, when a person is detained in custody on a criminal charge for want of bail. The defendant may waive this review. (Pen. Code § 1270.2.)

This bill repeals Penal Code section 1270.2.

Existing law states that in setting, reducing, or denying bail, a judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a hearing of the case. The public safety shall be the primary consideration. (Pen. Code § 1275.)

This bill repeals Penal Code section 1275 and instead creates a pretrial release hearing where a judge or magistrate, in making a determination to release an individual, shall consider the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, the probability of his or her appearing at trial or at a hearing of the case, and the presumption of innocence. The public safety, the safety of the victim, and the probability of the accused appearing in court as required shall be the primary considerations.

This bill states that in considering the seriousness of the offense charged, the court shall include consideration of the alleged injury to the victim, alleged threats to the victim or a witness to the crime charged, and the alleged use of a firearm or other deadly weapon in the commission of the crime charged.

This bill states that it shall be the duty of the court to determine what condition or conditions will ensure the safety of the community, secure the defendant's appearance at trial or at a hearing of the case, and facilitate pretrial release. If, after a hearing, the court finds that no conditions will reasonably assure the defendant's appearance in court or at a hearing of the court and protect public safety, the court shall issue an order explaining what condition or conditions it considered and why those conditions were inadequate.

This bill provides that in making a pretrial release decision, the court shall consider the pretrial services agency's risk assessment and recommendations on conditions of release. If the court's release decision is not consistent with the pretrial services agency's assessment and recommendations, the court shall include in its order for release a statement of the reasons.

This bill specifies that for persons who had a hearing after the district attorney filed a motion for pretrial detention, the court shall not consider the pretrial services agency's risk assessment and shall instead determine whether the person meets one of the following descriptions in order to keep detained:

- The person is charged with a capital crime;
- The person is charged with a felony involving violence or sexual assault and the person's release would likely result in great bodily harm to another person or persons;
- The person is charged with a felony offense and the person threatened another with great bodily harm and it is likely that the person would carry out the threat if released.

This bill provides that, if a person is in custody at the time of his or her arraignment, the judge or magistrate shall consider the pretrial services report and any relevant information provided by the prosecuting attorney or the defendant and order the pretrial release of the person without further conditions, subject to the person signing a release agreement. The reason for this decision shall be stated in the record.

This bill states that if a judge or magistrate determines that pretrial release, without conditions, will not reasonably assure the appearance of the person in court, the safety of the victim, or public safety, the judge or magistrate shall order pretrial release subject to a release agreement with the least restrictive further nonmonetary conditions that the judge or magistrate determines will reasonably assure the appearance of the person as required, the safety of the victim, and public safety. The court shall include in its release order a statement of the reasons for its determination.

This bill specifies that a court is not required to specify the reasons for ordering the defendant be provided the following services upon release: a reminder notification to come to court or assistance with transportation to and from court.

This bill authorizes the court to set monetary bail at the least restrictive level necessary or a combination of monetary bail and other conditions, to assure the appearance of the defendant in court and requires the court include in the release order a statement of the reasons for its determination.

This bill requires the court, in setting monetary bail, to conduct an inquiry into a person's ability to pay and to make a finding that the defendant has the present ability to pay the monetary bail set without substantial hardship.

This bill provides that a defendant for whom conditions of release are imposed and who, five days after the imposition of the conditions, continues to be detained as a result of an inability to meet the conditions of release, shall be entitled to an automatic review of the conditions by the court. The defendant may waive this review.

This bill authorizes a district attorney to file a motion seeking the pretrial detention of a person in certain circumstances, including when a person has been charged with a capital crime, a felony involving violence or sexual assault and the person's release would likely result in great bodily harm to another person or persons, or a felony offense and the person threatened another with great bodily harm and it is likely that the person would carry out the threat if released.

This bill provides that if a district attorney files a pretrial detention motion, a hearing shall be held within 48 hours to determine whether to release the person pending trial, unless the person waives the hearing.

This bill specifies that a person may be detained pretrial after a detention hearing if the court makes the following findings, which are consistent with the California Constitution:

- The defendant has been charged with a capital crime and the facts are evident or the presumption great;
- The defendant has been charged with a felony offense involving an act of violence on another person, or a felony sexual assault offense on another person, the facts are evident or the presumption great, and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to another person or persons; or,
- The defendant has been charged with a felony offense, the facts are evident or the presumption great, and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm in the charged case and that there is a substantial likelihood that the person would carry out the threat if released.

This bill authorizes a defendant to execute an unsecured appearance bond, which may be required to be signed by uncompensated third parties, or a secured bond in the amount specified by the court.

This bill defines an "unsecured appearance bond" to mean an order to release a person upon his or her promise to appear in court and his or her unsecured promise to pay an amount of money, specified by the court, if he or she fails to appear as promised.

This bill authorizes a court, after a defendant has been released from custody, amend the release order to change the conditions of release, including any monetary bail, upon a change in circumstances.

This bill provides that a defendant who has violated the terms or conditions of release may be held in contempt upon a motion of the prosecuting attorney if the court finds:

- There is probable cause that the defendant has committed a crime while on pretrial release or there is evidence that the defendant has violated any condition of release; and,
- There is no condition or combination of conditions of release that would reasonably assure that the defendant will not flee or pose a danger to any other person or the community or the defendant is unlikely to abide by any condition or combination of conditions of release.

This bill requires each county to establish a pretrial services agency that would be responsible for gathering information about newly arrested persons, conducting pretrial risk assessments, preparing individually tailored recommendations to the court, and providing pretrial services and supervision to persons on pretrial release.

This bill authorizes an unnamed agency to oversee pretrial services agencies and to provide training and assistance on pretrial release to judges, prosecutors, defense attorneys, jail staff, law enforcement agencies, and pretrial services agencies.

This bill provides guidelines for the pretrial risk assessment tool which shall be selected by the unnamed agency or for existing pretrial risk assessment tools that are in compliance with these guidelines and that had been used by counties prior to the effective date of this bill.

This bill requires the Board of State and Community Corrections (BSCC), in consultation with the unnamed agency, to develop a plan that establishes statewide requirements for counties related to annual reporting of pretrial release and detention information, which includes at minimum information about the percentage of individuals released on pretrial, the percentage of those who fail to appear, those who commit new crimes while on pretrial release, and the rate of judicial concurrence with recommended conditions of release.

This bill requires each county to make publicly available its risk assessment tool guidelines, factors, weights, studies, data upon which validation studies rely, and information about how a risk assessment tool was reformed.

This bill states that it is the intent of the Legislature in enacting this act to safely reduce the number of people detained pretrial, while addressing racial and economic disparities in the pretrial system, and to ensure that people are not held in pretrial detention simply because of their inability to afford money bail.

This bill makes other conforming changes.

COMMENTS

1. Need for This Bill

According to the author of this bill:

In California, the median bail amount is \$50,000 – five times higher than the national median. On any given day, approximately 60% of people in jail in California are either awaiting trial or sentencing. Many of those in California’s jails are there for no reason other than the fact that they are unable to afford money bail.

Unnecessary pretrial detention compromises defendants’ ability to defend themselves against their accusers and threatens the integrity of the criminal system. Detained defendants are 25% more likely than similarly situated released defendants to plead guilty to a crime. The incentive to get out of pretrial detention is so strong that people even plead guilty to crimes they did not commit. Studies have likewise shown that, holding all other factors constant, individuals who are detained prior to trial suffer from greater conviction rates and more severe sentencing than those who are released prior to trial.

High bail amounts and pretrial detention also disproportionately impact people of color. Studies have shown that bail amounts are 35% higher and 19% higher for African American men and Hispanic men, respectively, than for white men. Among defendants for whom monetary bail is set, Black and Hispanic defendants are twice as likely to be detained pretrial than white defendants. The disparity in drug offenses is even more stark, with the likelihood of detention for Black and Hispanic defendants being 96% and 150% higher respectively, than the odds of detention for white defendants.

In addition to penalizing pretrial defendants, our current money bail system burdens California families as well. Even a short period of pretrial detention can result in loss of employment, housing, and public benefits for the detained person – costs that then must be borne by family members already struggling to make ends meet. Family members who are able to scrape together enough money to pay a non-refundable fee to a for-profit bail company to secure a loved-one’s release from jail often end up with long-term debt to the bail company, even when their loved one is innocent of any wrongdoing and is never convicted of a crime. These costs hit women the hardest, with 83% of court-related costs on behalf of a loved one being taken on by women.

...

SB 10 seeks to remedy California’s failing pretrial system by reducing reliance on money bail, supporting pretrial defendants with pretrial services, focusing detention resources on those who pose a risk of danger, reducing racial disparities, and ensuring that people are not left in jail simply because they cannot afford to pay for their release. Under SB 10, courts will evaluate whether an individual can be safely released from jail pending trial, and if so under what set of conditions to assure that the person will come to court as required and avoid committing crimes.

SB 10 draws from successful models around the country and in California. For example, Kentucky utilizes a risk-assessment system and no longer relies on commercial bail and releases 70% of its pretrial defendants (68% on non-financial releases). In Kentucky, 89% of released defendants make all future court appearances, and 92% are not re-arrested while on pretrial release. Santa Clara County has implemented a successful pretrial services model and has saved \$33 million in six months by keeping 1,400 defendants out of jail.

2. Bail Generally

Existing law provides a process whereby the court may set a bail amount for a criminal defendant. (Penal Code Section 1269b.) Additionally, Section 12 of Article 1 of the California Constitution provides, with limited exceptions, that a criminal defendant has a right to bail and what conditions shall be taken into consideration in setting bail. A defendant may post bail by depositing cash or an equivalent form of currency, provide a security in real property, or undertake bail using a bail bond.

The bail bond is the most likely means by which a person posts bail and is essentially a private-party contract that provides the court with a guarantee that the defendant will appear for a hearing or trial. A defendant pays a licensed bail agent a percentage of the total amount of bail ordered as a non-refundable fee – often an amount in the range of 10%. The bail agent will contract with a surety company to issue a bail bond – essentially, an insurance policy. The bond is issued providing that if the defendant fails to appear, the county will receive the full amount of bail set by the court. The bond is provided to the court and, if accepted, the defendant is released. As designed, the bail system often allows the court to rely on the private sector to ensure appearances and provide a means for the county to be made whole in the event that a person fails to appear.

While the main purpose of a bail bond is to provide some assurance that a defendant will return to court to resolve the pending charges, courts also consider the danger a released defendant will pose to the public or specific persons. Bail is set through a bail schedule that lists preset amounts of bail for various crimes. A committee of judges in each county promulgates the bail schedule for that county. (Pen. Code § 1269b, subd. (c).) A defendant or the prosecution can move the judge presiding over a particular case to raise or lower the amount of bail, or the defendant can request release on his or her own recognizance. (Pen. Code § 1275.) Additional statutory rules apply if the defendant is charged with a serious felony or domestic violence. (Pen. Code § 1270.1.)

The existing bail system has come under scrutiny because of claims that it does not promote public safety and it unfairly penalizes defendants who are poor while allowing defendants who have means to buy their way out of jail. (*California's Bail System Punishes the Poor, and It's Time for the Government to Do Something About It*, Skelton, Los Angeles Times (Jan. 16, 2017) < <http://www.latimes.com/politics/la-pol-sac-skelton-california-bail-system-20170116-story.html>> [as of Mar. 18, 2017].) Lawsuits have been filed across the country, including the cities of Sacramento and San Francisco, under the theory that the current bail system unfairly discriminates against the poor in violation of the Fourteenth Amendment's Equal Protection Clause. (See < <http://equaljusticeunderlaw.org/wp/current-cases/ending-the-american-money-bail-system/>> [as of Mar. 28, 2018].)

The Legislature has responded to the push for bail reform with bills that would implement major changes to the system, such as this bill and AB 42 (Bonta). The Judiciary has separately set up a working group to study current pretrial detention practices and provide recommendations for potential reforms. (*Chief Justice Appoints Working Group to Recommend Changes in Pretrial Detention* (Oct. 28, 2016) < <http://newsroom.courts.ca.gov/news/chief-justice-appoints-working-group-to-recommend-changes-in-pre-trial-detention>> [as of Mar. 18, 2017].)

3. Alternative to Bail: Own Recognizance Release

In cases where the defendant is likely to return to court and where the safety of the public or specific persons will not be put at risk, a court can release someone on his or her own recognizance (OR). This includes both felonies and misdemeanors. An OR release is essentially release without payment of bail pending trial or other resolution of a criminal case.

In order to be released on OR,

[T]he defendant signs a release agreement promising to appear at all required court hearings in lieu of posting bail. Before granting an OR release, the judge must evaluate the defendant's flight risk by considering the defendant's ties to the community, whether the defendant has a past record of failures to appear in court, and the possible sentence the defendant faces if convicted. The judge must also evaluate risk to public safety by considering any threats that have been made by the defendant, as well as any record of violent acts.

In counties with active pretrial programs, the judge may consider pretrial reports and recommendations based on interviews and evaluations that assess the defendant's public safety and flight risk. For example, in Marin County, the county probation department contracts with an independent agency that provides pretrial services. Using an evidence-based pretrial risk-assessment tool, agency staff evaluates eligible defendants along three

dimensions: criminal history, employment and residential stability, and drug use. Following a verification process and an evaluation of danger to self or others, the agency prepares a recommendation along with a report. After approval by the probation department, the report is submitted to the court. In addition to supplying the court with recommendations and reports, these programs may also offer a range of conditional release options. These release options may include release on electronic monitoring, release with alcohol monitoring, or release to home detention. If pretrial release is not granted and bail is fixed by the court, realignment legislation also permits the sheriff to authorize the pretrial release of inmates. Under the legislation, a county board of supervisors must first designate the sheriff as the county's correctional administrator and may then authorize the correctional administrator to place pretrial jail inmates who do not pose a significant threat to public safety in an electronic monitoring program when specified conditions are met.

In some instances, an unsentenced jail inmate who has not posted bail may be released due to jail overcrowding. At implementation of realignment, 17 counties were operating under court orders that limit the number of inmates they can hold at one or more of their county facilities. Statewide, in the year before realignment, the average annual jail population was 71,060, and releases due to lack of capacity numbered 6,800 per month for unsentenced inmates and 3,900 per month for sentenced offenders.

(Tafoya, *Assessing the Impact of Bail on California's Jail Population*, Public Policy Institute of California (June 2013), p. 8 (citations omitted).) If a judge determines that a person should not be released on OR, then the judge can set bail with the bail schedule as a guide.

This bill repeals the current section in the Penal Code authorizing OR release and instead implement a new pretrial release procedure that would allow most people to be released, either with or without conditions, or with money bail if the court determines that it is necessary.

4. Ongoing Concerns over County Jail Populations

The most recently available data from the BSCC shows that the majority of jail inmates are unsentenced, roughly 62 percent of the population. Data shows that California relies more heavily on pretrial detention than the rest of the United States. (Sonya Tafoya, *Pretrial Detention and Jail Capacity in California*, Public Policy Institute of California (July 2015) <http://www.ppic.org/main/publication_quick.asp?i=1154> [as of March 15, 2017].) This dynamic strains the capacity of county jails making it necessary to release sentenced inmates, while people who have not been found guilty of any crimes wait in jail because they have not been released on OR and cannot afford to post bail.

This bill would help relieve jail overcrowding by limiting the persons who could be detained pretrial to offenders who have committed certain violent crimes.

5. The Effect of this Legislation

This bill makes several changes to the pretrial release procedures in current law.

Existing law requires each county to establish a countywide bail schedule which is used by the jails upon arrest and by the courts during arraignment to determine the amount of bail in each case. This bill does away with the countywide bail schedules and instead provides that upon

arrest and booking into a county jail, the pretrial services agency shall conduct a pretrial assessment on the person and prepare a report that contains recommendations for whether the person should be released without conditions or with the least restrictive condition or conditions. In most cases involving a misdemeanor, the arrested person must be released by pretrial services upon signing a release agreement. In most felony cases, pretrial services will transmit the pretrial services report to an on-call judge, magistrate, or commissioner who will then review the pretrial services report and order that the person be released either without conditions, or with the least restrictive conditions. If a person is arrested for certain specified felonies or misdemeanors involving violence, the person cannot be released until his or her arraignment.

Existing law requires a person to be arraigned on their case within 48 hours, unless the person is arrested on Wednesday night and Friday is holiday which means that a person can remain in jail prior to arraignment for 4 days. This bill requires, if a person is arrested on a Wednesday night and that following Friday is a court holiday, the person to be arraigned on Thursday.

Existing law authorizes a judge to set bail at arraignment or separate bail hearing using the countywide bail schedule as a guide, with the ability to set bail at a higher or lower amount. The judge may also deny bail in certain situations or set bail in an amount that is restrictively high that would result in a defendant remaining in custody. The judge may also use his or her discretion to release a person on OR in any case not involving a capital crime.

As stated above, this bill gets rid of the county bail schedules and instead requires release at arraignment unless a pretrial detention motion is filed by the district attorney. At arraignment, the court is first required to consider releasing the person without any conditions, and if the court determines that releasing the person without conditions will not reasonably assure that the person will come back to court as required and assure that the defendant will not commit new crimes, the court can place nonmonetary conditions on the defendant. These conditions must be the least restrictive and the person cannot be required to pay for any conditions. Only if the court finds that the person cannot be released with nonmonetary conditions in such a way that will reasonably assure that the person will come back to court as required, can the court consider money bail. If the court imposes money bail, it must make a determination that the person has the present ability to pay and that the amount of bail ordered does not cause substantial hardship on the defendant, as defined. This bill authorizes the use of an unsecured bond or a secured bond to make bail.

This bill also provides that a person who is released pretrial may have the order modified by motion of the district attorney or defense based on a change in circumstances. Also, if a defendant has been ordered released but is still in custody after five days due to a condition of release that the defendant cannot meet, the defendant is entitled to automatic review of the order.

This bill only authorizes the pretrial detention of a person if the court finds that the person falls into one of the following categories, which is consistent with the California Constitution provisions on bail:

- The defendant has been charged with a capital crime and the facts are evident or the presumption great;
- The defendant has been charged with a felony offense involving an act of violence on another person, or a felony sexual assault offense on another person, the facts are evident or the presumption great, and the court finds based upon clear and convincing evidence

that there is a substantial likelihood the person's release would result in great bodily harm to another person or persons; or,

- The defendant has been charged with a felony offense, the facts are evident or the presumption great, and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm in the charged case and that there is a substantial likelihood that the person would carry out the threat if released.

Existing law does not require counties to use a pretrial risk assessment tool and does not provide any statewide standards for pretrial assessment tools used by counties. This bill requires an agency, to be later determined, to pick a pretrial assessment tool for counties to use that meet certain specifications that are designed to avoid bias in release decisions. Counties that are already using pretrial assessment tools may continue to use them as long as they meet the required specifications. This bill requires counties to annually report to the state pretrial release and detention information, which includes at minimum information about the percentage of individuals released on pretrial, the percentage of those who fail to appear, those who commit new crimes while on pretrial release, and the rate of judicial concurrence with recommended conditions of release.

This bill requires each county to develop a pretrial services agency that meets the following specifications:

- Uses methods that research has proven to be effective in reducing unnecessary detention and to employ the least restrictive interventions and practices;
- Ensures that services provided are culturally and linguistically competent;
- Ensures that all policies and practices are developed and applied to reduce or eliminate bias based on race, ethnicity, national origin, immigration status, gender, religion, and sexual orientation; and,
- Assists pretrial defendants with complying with their conditions of release and to address noncompliance with pretrial services requirements administratively.

Under existing law, if a person is released on OR and he or she violates the terms of release or is arrested on a new charge, the person's release may be revoked and the court may either set money bail, re-release the person with new conditions or hold the person in contempt. Under the provisions of this bill, if a person is believed to be in violation of a condition of release the court may modify the release order to add conditions. In order to hold a person in contempt, the court must hold a hearing to determine whether there is probable cause that the person has committed a crime while on pretrial release or that the person has violated a condition of release and the court must determine that there is no condition or combination of conditions of release that would reasonably assure that the defendant will not flee or pose a danger to any person in the community, or that the person is unlikely to abide by any conditions of release.

6. Arguments in Support

According to Ella Baker Center for Human Rights, a co-sponsor of this bill:

This bill seeks to significantly reduce the reliance on the money bail system that punishes poverty. In its place, the bill establishes a robust pre-trial services program and the usage of a validated risk-assessment tool to determine the safe release of people, pending the resolution of their cases. It is a common sense,

practical approach to enhancing public safety in California and is in line with a growing momentum of jurisdictions across the country to reduce the impact of the predatory money bail system.

In California, nearly 2/3 of the people sitting in jail are either awaiting trial or sentencing, at a significant cost to the state and vulnerable families. The State spends \$5 million per day to lock up people who are waiting to go to court—totaling more than \$1.8 billion annually. Families are forced to make the difficult decision between covering their basic needs like housing and paying the bail bonds agency. Families that cannot afford the 10% fee often go on payment plans that perpetuate the cycle of poverty. When a person remains in jail because they cannot afford bail, others may need to fill the financial gap he or she leaves behind, forcing family members to drop out of school to get a job, or quitting a job to take care of children that are left behind.

Further, people forced to stay in jail because they cannot afford bail face a number of additional obstacles. Many people take coercive plea deals in order to avoid waiting for trial so they can get back to their lives and familial obligations. Research has shown that compared to people who are released prior to trial, those held for their entire pretrial detention have a greater likelihood of being sentenced to jail. Studies have also shown a strong correlation between length of detention and recidivism. Compared to people who were held no more than 24 hours, those held for 8 to 14 days were 51% more likely to go back to jail for another crime. Pre-trial detention as a result of inability to pay bail can also result in loss of employment, housing, child custody rights, etc. Black men are not only less likely to be released on their own recognizance, their bail amounts are also 35% higher on average than white men. Most alarmingly, nearly 80% of all jail deaths in California occur among people who are detained pre-trial.

People of color are already over-represented in the criminal justice system and current pre-trial detention practices exacerbate these disparities. The current system of bail was designed to most severely impact those who can least afford it. SB 10 provides California with the opportunity to decriminalize poverty, reduce racial disparities, and enhances public safety outcomes.

7. Arguments in Opposition

According to the Golden State Bail Agents Association:

This bill would require the court to release a defendant being held for a misdemeanor offense on his or her own recognizance unless the court makes an additional finding on the record that there is no condition or combination of conditions that would reasonably ensure public safety and the appearance of the defendant if the defendant is released on his or her own recognizance.

SB 10 would endanger public safety by forcing the release of these high risk misdemeanor defendants without bail. Bail is an important public safety tool because it is paid for by the defendants family and close friends who cosign the bail agreement vouch for the defendant. These cosigners now have a financial incentive to make sure defendant attends all of his or her court dates. It is only

going to court that defendant can be compelled to attend drunk driving and domestic violence intervention programs that can make a positive difference in a defendant's life and end the cycle of domestic abuse or drunk driving.

According to the Los Angeles Police Protective League:

California Chief Justice Cantil-Sakauye has formed the Pretrial Detention Reform Work Group to address the bail issues from a global perspective. Our understanding is that the Work Group's recommendations will be provided to Chief Justice Cantil-Sakauye in December 2017.

In order to assure that any Legislative action is made with full knowledge of the Judicial Council's Pretrial Detention Reform Work Group's recommendation we believe that Senate Bill 10 should be deferred until after those recommendations are available.

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