

University of California, Hastings College of the Law

## UC Hastings Scholarship Repository

---

Propositions

California Ballot Propositions and Initiatives

---

2020

### REFERENDUM ON LAW THAT REPLACED MONEY BAIL WITH SYSTEM BASED ON PUBLIC SAFETY AND FLIGHT RISK

Follow this and additional works at: [https://repository.uchastings.edu/ca\\_ballot\\_props](https://repository.uchastings.edu/ca_ballot_props)

---

PROPOSITION  
**25** REFERENDUM ON LAW THAT REPLACED  
MONEY BAIL WITH SYSTEM BASED ON  
PUBLIC SAFETY AND FLIGHT RISK.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

The text of this measure can be found on the Secretary of State's website at [voterguide.sos.ca.gov](http://voterguide.sos.ca.gov).

A "Yes" vote approves, and a "No" vote rejects, a 2018 law that:

- Replaced the money bail system (for obtaining release from jail before trial) with a system based on a determination of public safety and flight risk.
- Limits detention of a person in jail before trial for most misdemeanors.

**SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:**

- Increased state and local costs possibly in the mid hundreds of millions of dollars annually for a new process for releasing people from jail prior to trial. Unclear whether some of the increased state costs would be offset by local funds currently spent on this type of workload.
- Decreased county jail costs possibly in the high tens of millions of dollars annually.
- Unknown net impact on state and local tax revenues generally related to people spending money on goods rather than paying for release from jail prior to trial.

ANALYSIS BY THE LEGISLATIVE ANALYST

**BACKGROUND**

**RELEASE FROM JAIL BEFORE TRIAL CAN OCCUR IN TWO WAYS**

**Placement in Jail After Arrest.** People charged with a crime must attend various trial court proceedings before the actual case can be heard in trial court. The first court proceeding—also known as arraignment—involves the court telling people of the charges filed against them and appointing an attorney if needed. Some people who are arrested are taken to county jail before arraignment. County sheriffs running the jail can choose to release the person immediately or place the person in the jail.

**Release From Jail Before Trial.** Under the State Constitution, people arrested and placed into county jail—except for certain felony crimes—have the right to release before trial. The Constitution specifies that these people shall be released under conditions that are not excessive. When making decisions related to releasing a person before trial, trial courts must consider the (1) seriousness of the crime the person is accused of, (2) person's prior criminal record, and (3) likelihood of the person appearing in court. The courts may use different pieces of information, including risk assessment

tools (discussed in more detail below), to help make these decisions.

Under state law, people generally are released from jail before trial in one of two ways:

- **Own Recognizance.** Trial courts can release people on their "own recognizance" (OR), which generally refers to a person's promise to appear at future required court proceedings. County sheriffs running jails can also release people on OR under certain conditions.
- **Bail.** People can be released on bail. Bail generally refers to a financial guarantee that a person will appear in court as required.

**Pretrial Risk Assessment Tools.** To help with decisions about whether to release people prior to trial, most courts and counties use tools to assess the risk (or likelihood) that a person released will commit a new crime or fail to appear in court. These tools were developed based on research that shows people with certain traits (such as being younger) are more likely to commit a new crime or fail to appear in court. The tools assign points based on people's traits. For example, one tool assigns more points to people who are younger than 22 years of age as they are more likely to commit crimes than older people. Similarly, people who failed to appear in court multiple times in

**ANALYSIS BY THE LEGISLATIVE ANALYST**

CONTINUED

the past are less likely to appear in the future and would receive more points. A person’s risk level is determined by the total number of points received. This risk level is then used to help decide if the person should be released and under what conditions.

**RELEASE ON BAIL**

**Bail Amount Determined by Each Trial Court.** State law requires that the trial court in each county adopt a bail schedule. This schedule lists the amount of bail needed for release for each crime. Bail schedules generally vary by county but require more bail for more serious crimes. For example, the current Los Angeles County bail schedule requires \$20,000 for forgery and \$250,000 for arson of a home.

**Bail Provided in Two Ways.** These ways are:

- **Provided by Person to Court.** A person can provide cash, property, or other items to the trial court that equals the amount of bail required for release. This is generally returned if the person appears in court as required.
- **Provided by Bail Agent.** A person can pay a nonrefundable fee to a bail agent to buy a bail bond that is backed by an insurance company. This fee is typically no more than 10 percent of the person’s bail amount. By providing the bond, the bail agent agrees to pay the full bail amount if the person does not appear in court as required. If this happens, the bail agent can seek repayment from the person.

**Failure to Appear Rarely Results in Payment of Full Bail Amount.** If a person does not appear in court as required, the court can decide that bail is owed. State law defines when the full bail amount must be paid. For example, bail is not paid if the person is returned to custody by law enforcement or by bail recovery staff (sometimes called “bounty hunters”) within 180 days of the court’s decision. Bail is also not paid in other cases, such as if the court fails to properly notify the insurance company that bail must be paid. As a result, bail is actually paid in only a small number of cases. Counties and cities receive this paid bail.

**Bail Bond Industry Regulated by State.** This includes licensing about 2,500 bail agents and monitoring

the fee charged for a bail bond set by about 20 insurance companies that back such bonds. The state also investigates and can administratively address complaints against bail agents and insurance companies. Additionally, the state works with local governments to prosecute criminal violations by bail agents and insurance companies in the courts. The state charges fees to help support regulation costs.

In 2018, the bail industry issued about \$6 billion in bail bonds and collected about \$560 million in bail bond fees. Insurance companies are required to pay a 2.4 percent state insurance tax on these fees—about \$13 million in 2018.

**RELEASE FROM JAIL CAN OCCUR AT DIFFERENT TIMES BEFORE TRIAL**

**Release Process Before Arraignment.** People can generally be released from jail before arraignment after providing bail as listed in the bail schedule for certain crimes. In some counties, trial courts can allow other entities (such as county probation departments) to release certain people on OR before arraignment. These people can be required to obey certain conditions (such as regularly checking in with county probation staff). Those who do not provide bail or are not released on OR are detained until arraignment.

**Release Process After Arraignment.** At arraignment, the court decides whether to (1) hold people in jail, (2) change the amount of bail required for release, or (3) release the person on OR. People who are not released on OR and unable to provide the required bail generally are held in county jail. The court can require those who are released to obey certain conditions. In some cases, people are charged fees related to pretrial release. For example, a person may be charged for the cost of electronic monitoring, which may be a condition ordered by the court. The court can modify these decisions until trial or until the case is otherwise resolved.

**PASSAGE OF NEW BAIL AND PRETRIAL LAW IN 2018**

In 2018, the Legislature passed and the Governor signed a law—Senate Bill (SB) 10—to eliminate bail and change the processes for getting released from jail before trial. This law would have gone into

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

effect on October 1, 2019. However, this did not happen because a referendum on SB 10 qualified for this ballot in January 2019. Under the State Constitution, when a referendum on a new state law qualifies for the ballot, the law goes on hold until voters determine whether to put it in effect.

PROPOSAL

Determines Whether New Bail and Pretrial Law Goes Into Effect. Proposition 25 is a referendum on SB 10 and will determine whether the bill will go into effect. A “yes” vote means SB 10 will go into effect and a “no” vote rejects SB 10. Specifically, approval of this proposition would (1) eliminate release on bail, (2) create a new process for release before arraignment, and (3) change the existing process for release at arraignment.

ELIMINATES RELEASE ON BAIL

Proposition 25 eliminates release from county jail on bail before trial.

CREATES NEW PROCESS FOR RELEASE BEFORE ARRAIGNMENT

Require Automatic Release for Most Misdemeanor Crimes. This proposition requires people placed in county jail for most misdemeanors, which are less serious crimes than felonies, to be automatically released within 12 hours of being placed in jail. Certain people placed in jail for misdemeanors, such as those placed in jail for domestic violence or who have failed to appear in court more than two times in the past year, would not be automatically released.

Release for Felonies and Some Misdemeanors Require Assessment. This proposition requires that people placed in jail for (1) felonies and (2) misdemeanors that are ineligible for automatic release be assessed for their risk of committing a new crime or failing to appear in court if released. Assessment staff would collect certain information, including each person’s risk level as determined by a pretrial risk assessment tool. Staff would generally be required to release people found to be low risk. Depending on rules made by each trial court, certain medium-

risk people would also be released by assessment staff or by a judge. People who are released could be required to obey certain conditions. These conditions could include supervision, such as regular check-ins with county probation staff or electronic monitoring. However, the conditions of low-risk people could not include supervision. The court could change the conditions for good cause. Unlike current law, no fees could be charged as a condition of release. High-risk people, medium-risk people who are not released, and certain others (such as those charged with certain severe felonies, including murder or arson of a home) would remain in county jail until arraignment. Assessment and any release would need to be completed no later than 36 hours from a person being placed in jail.

Trial Courts Responsible for Pretrial Assessment.

Proposition 25 makes state trial courts responsible for pretrial assessment. This includes various activities, such as: (1) determining risk levels using pretrial risk assessment tools, (2) collecting additional information related to a person’s risk, (3) releasing certain people based on their risk level, and (4) suggesting conditions of pretrial release to the court. The trial court could use court employees as assessment staff or contract with certain local public agencies (such as the county probation department) to perform these activities. If neither the court nor an existing local public agency would be willing or able to do so, the court could contract with a new local public agency created specifically to perform these activities.

CHANGES PROCESS FOR RELEASE AT ARRAIGNMENT

At arraignment, people in jail would generally be released on OR. District attorneys could request a hearing to detain people in jail until trial regardless of whether they were previously released. People would only be detained in certain circumstances—such as if the court decided there were no conditions that could ensure they would not commit a crime or fail to appear in court. Those released could be required to follow certain conditions but could not be charged fees as a condition of release. After arraignment, the district attorney or public defender could request a detention hearing in certain circumstances, such as if there was new evidence in the case. The

**ANALYSIS BY THE LEGISLATIVE ANALYST**

CONTINUED

court could modify OR decisions and conditions of release in certain circumstances, such as if new information was provided by pretrial assessment staff.

**FISCAL EFFECTS**

Proposition 25 would impact both state and local costs. The actual size of these effects is uncertain and would depend on how the proposition is interpreted and implemented. For example, it is unclear how many people the courts would release pretrial and the conditions they would be required to follow. As such, the effects could be higher or lower than the estimates below.

**Increased State and Local Pretrial Release Costs.**

The new pretrial release process would increase workload for state trial courts, as well as county district attorneys and public defenders. For example, there would be workload related to the new detention hearings. This increase in workload could be offset by reductions in other workload. For example, workload from hearings about the amount of bail required would be eliminated.

Additionally, state costs would increase as the state trial courts would be responsible for pretrial assessment. The state would also likely have increased supervision costs, such as due to an increase in the number of people being supervised after being released pretrial.

In total, **increased state and local pretrial costs could be in the mid hundreds of millions of dollars annually.**

This amount is less than 1 percent of the state’s current General Fund budget. The actual size of the increase in costs would depend on various factors. Major factors include the number of people released pretrial, their conditions of release (such as how much supervision is required), and the costs of these conditions. It is unclear whether some of the increased state costs would be offset by existing local government spending on pretrial workload.

**Decreased County Jail Costs.** This proposition would reduce county jail populations. This is largely because more people would likely be released

pretrial on OR rather than remain in jail. For example, some people who would have been unable to pay bail would be released under the new pretrial process. However, some of this decline in the jail population could be offset by other factors. For example, some people—who otherwise would have been released on bail—could end up being detained until trial. On net, we estimate that the reduction in the jail population would reduce costs to local county jails, possibly in the high tens of millions of dollars annually. The actual decrease would depend on the number of people placed into jail as well as release decisions made by the courts. These resources would likely be redirected to other county activities.

**Impact on State and Local Tax Revenues.**

This proposition would impact both state and local tax revenues. On the one hand, it would reduce state and local tax revenues. For example, insurance companies would no longer pay taxes on bail bond fees. On the other hand, state and local tax revenues could increase. For example, people could buy goods with money that would have otherwise been spent on bail bond fees. If these goods were subject to sales taxes, this would increase both state and local tax revenues. The total net impact on state and local tax revenues is unknown.

Visit <http://cal-access.sos.ca.gov/campaign/measures/> for a list of committees primarily formed to support or oppose this measure.

Visit <http://www.fppc.ca.gov/transparency/top-contributors.html> to access the committee’s top 10 contributors.

**If you desire a copy of the full text of this state measure, please call the Secretary of State at (800) 345-VOTE (8683) or you can email [vigfeedback@sos.ca.gov](mailto:vigfeedback@sos.ca.gov) and a copy will be mailed at no cost to you.**