

**BAIL REFORM**

There is growing acknowledgement, based on a combination of financial, social equity and justice considerations that the current bail system in Los Angeles County (“County”) is greatly in need of reform. Currently, the County’s primary method for determining whether or not someone can be released before trial is through the setting of money bail. The theory behind requiring bail is to minimize the intrusion on the liberty of a person accused of a crime, while at the same time creating a strong incentive for defendants to keep their court date. These days, however, getting out on bail correlates much more to a person’s ability to pay, than to any likelihood of appearing in court or relative risk to the safety of the public. Many people remain in jail awaiting trial simply because they cannot afford bail, often losing their jobs, their housing, and, in some instances, even their families—despite a Court’s determination that they are eligible for bail and, therefore, pose only a minimal threat to public safety. The bail bonds industry can provide important services, such as helping defendants navigate the complicated steps of posting real property as bond through assessment and deeding property to the

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county, transactions that many defense attorneys are not set up to handle. Money bail, however, contributes to overcrowding in our jails, has a disproportionate impact on ethnic minority and other poor communities, and, perhaps most importantly, has not been shown to improve criminal justice outcomes.

The Justice Policy Institute, a Washington D.C.-based think-tank, has described the present bail bonding system as “a system that exploits low income communities; is ineffective at safely managing pretrial populations; distorts judicial decision-making.” *Justice Policy Institute*, “For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice”, p.11 (September 2012).

The County operates the largest and most costly local jail system in the United States, with an average daily population (as of February 2017) of 17,362 individuals and an annual Sheriff Custody budget in excess of \$800 million. The Sheriff, who operates the County jail system, estimates that 48% of individuals in the County jails are being held while they await trial, many times due to their inability to pay bail. This imposes a significant financial burden on Los Angeles taxpayers, with little proven public safety benefit. On a national level, according to the Pretrial Justice Institute, the majority of local jail spending is related to the incarceration of lower-risk defendants, who could otherwise be released using non-financial bail considerations.

This issue is replicated on the national level, with more than 450,000 people being detained in local, state and federal jails across the U.S. while they await trial, for the same reasons and reflecting the same policy issues as in Los Angeles County. The cost of this level of pretrial incarceration is estimated at up to \$14 billion per year. The

collateral costs of this bail system can reach as high as \$140 billion per year, including loss of employment and other opportunities. Adopting alternatives to pretrial incarceration could yield \$78 billion in annual savings and benefits nationally. *Pretrial Justice Institute*, "Pretrial Justice: How Much Does it Cost?" p.5 (January 2017).

In 1963, the County started a Release on Own Recognizance ("O.R.") Project through the Los Angeles Superior Court, which is now a component of the Pretrial Services Division. In 1993, the Pretrial Services Division was transferred from the Superior Court to the Probation Department. The Pretrial Services Division currently oversees the Bail Deviation Program, the O.R. Program, and the Electronic Monitoring Program, among others. The County, however, does not employ low-cost technology-based compliance methodology, like automated calls or SMS text message reminders, which, in other jurisdictions, have been shown to increase court appearances. The current cost of Los Angeles County pretrial services ranges from 0 to \$25.80 per person per day, compared to the \$177 per day to house someone in jail. The County could save tens of millions of dollars a year and reduce jail overcrowding simply by better utilizing and enhancing its current pretrial release programs. Statistics show that the County has a very low rate of pretrial release, which has a significant impact on overcrowding and spending in our jails. In 2015-16, only 565, or 44%, of the 1,294 people recommended for release on the O.R. program were actually released by the Courts. The County's Pretrial Services Division assesses approximately 24% of people booked into jail each year, leaving Judges with insufficient evidence to determine whether an individual is an appropriate candidate for reduced bail or O.R. release.

In 2011, The Vera Institute of Justice concluded that in LA County, “most detention decisions are not based on an informed assessment of whether an individual poses a danger to society or is likely to return to court. Instead, the decision is based on whether the arrestee has enough money to meet bail. Judicial officers reported that they tend to default to the bail schedule because they are not provided with sufficient facts about a defendant to make an informed decision.” *Vera Institute of Justice*, Los Angeles County Jail Overcrowding Reduction Project Final Report, Center on Sentencing and Corrections (September 2011). These findings have not changed over the last six years. Without a strong risk assessment tool and pretrial services program, and/or other means to provide better information to the courts, the County cannot move forward in making our bail system more equitable.

Other states provide examples of ways in which bail systems can be reformed. Kentucky, Oregon, Wisconsin and Illinois have all banned for-profit bail bonds businesses. The Kentucky legislature created a Pretrial Services Agency to conduct risk assessments that look at the likelihood of both pretrial criminal involvement and court appearance, and to make bail and/or pretrial release recommendations to the court. Of those released while awaiting trial under the provisions of the Kentucky Pretrial Services Agency in 2012, 90% made their court appearances, and 92% avoided new arrests in the time before trial. Oregon, Wisconsin, and Illinois have also replaced their commercial bail bonds industry by allowing defendants to deposit 10% of their bail amounts with the court, and have their money returned if they make the scheduled appearances.

Washington D.C. uses a risk-based assessment that makes an individualized determination of a defendant's risk to public safety, the likelihood of returning to court, and is not conditioned on, either directly or indirectly, a defendant's ability to pay. Washington D.C. has further instituted an automated telephone call reminder system for court appearances. Since moving to this new system, 80% of defendants are now released without bail. Of those, 88% are making all scheduled court appearances and avoiding new arrests, and 99% are avoiding new arrests for violent crimes.

In 2014, New Jersey voters supported an amendment to the state's constitution to essentially eliminate cash bail. New Jersey's changes parallel the systems instituted in Washington D.C. and federally. While bail is still an option in New Jersey, judges are now provided better tools and information to make decisions regarding release, including a risk assessment which is provided within 48 hours. These reformed bail systems, each tailored to the needs of the community served, are effective in protecting the public while also upholding the rights of defendants before trial, regardless of their ability to pay bail.

Most recently, Santa Clara County introduced a bail reform effort in response to a recommendation from a bail release working group set up by the Santa Clara County Board of Supervisors. The working group included stakeholders from law enforcement, the jails, the courts, non-profit organizations, legal and civil rights activists, and attorneys. The working group's final report found that more people could be released without impacting public safety if they were appropriately screened by their Pretrial Services Division. Additionally, Santa Clara developed its own validated risk-assessment tool for pretrial release investigations which provides judges with more

substantive, standardized and reliable information on which to base their pretrial release decisions. From inception, in June 2016, Santa Clara County has saved \$33 million by releasing 1,400 pretrial defendants. Pretrial release costs Santa Clara \$15-\$25 per day as compared to \$204 per day for incarceration. Since initiating these bail reform efforts, Santa Clara has maintained a 95% court appearance rate and a 99% public safety rate of those defendants released from custody while awaiting trial. Santa Clara County demonstrates how a well-funded pretrial program and a validated assessment tool are critical to effectuate successful and sustained bail reform efforts.

At a time when there is a national and statewide interest in bail reform, it is incumbent upon the County to evaluate our current bail system. In doing so, we must hear from those most knowledgeable about and most impacted by the present system, including incarcerated and formerly incarcerated individuals, families of the incarcerated, victims of crime, the bail bonds industry, the Probation Department, defense bar, the District Attorney, other law enforcement agencies, and the Judiciary. As other counties and states have proven, it is possible to have an alternative to money bail that still ensures a high rate of court appearance and that protects the safety of the public. Because every region is different, we must examine the detail of the County's current system and develop our own approach to ensuring safe pretrial release while creating a pretrial release system that is responsive to the needs of the criminal justice system, fair to individuals accused of crimes, and one that mitigates the racial and economic disparities of our current bail system.

**WE, THEREFORE, MOVE** that the Board of Supervisors direct the Office of the County Counsel to:

1. Lead an effort to review, research, and analyze the County's current policies and practices for incarceration, bail, screening and supervision of criminal defendants and the existing pretrial release system. Consult with all stakeholders, including but not limited to: the Chief Executive Officer, the Auditor-Controller, the District Attorney, the Public Defender, the Alternate Public Defender, Los Angeles County Bar Association Attorneys, Criminal Court Bar Association, Superior Court Judges, the Probation Department, the Sheriff, formerly incarcerated individuals and their families, community advocates, legal and civil rights organizations, and representatives of the bail bond industry.
2. Hire a consultant(s) to assess the best practices for establishing, implementing, utilizing, and validating evidence-based risk assessment tools used across the nation, and provide a description of a tool(s) that the County could utilize that provides an accurate prediction of appearance in court and protects public safety without interviewing inmates. The assessment should include, at a minimum, predictive accuracy and acquisition and licensing costs:
  - a. Evaluate static and non-static factors considered in the tool;
  - b. Evaluate the transparency of the various tools, and whether they are nonproprietary or proprietary;
  - c. Evaluate best practices for validating risk assessment tools;
  - d. Evaluate the process for educating and training all pretrial employees, including but not limited to prosecutors, public defenders,

alternate public defenders, private attorneys and Judges regarding use of any tool(s) reviewed; and

- e. Evaluate appropriate methodology to ensure that no disparate impact exists that could undermine predictive value, based on race, gender, national origin, immigration status, or sexual orientation.
3. Review and determine the best practices for establishing, implementing, and running a robust Pretrial Services Division that includes, but is not limited to:
    - a. Best methods for collecting information and data;
    - b. Best methods to establish court appearance reminders such as automated calls, SMS text messages, electronic monitoring, and other forms of supervision;
    - c. Recommendation on reallocating existing staff and funding, or adding staff and funding; and
    - d. Recommendation on the most effective place to house an enhanced Los Angeles County Pretrial Services Division.
  4. In partnership with the Chief Executive Officer, report back in the 120 day report on the potential for alternatives to the use of bail bondsmen; for example where defendants post a refundable 10% deposit with the Court.
  5. Explore whether the County can reorient their approach to bail in accordance with the California Constitution Article I, section 12 and the Federal Courts Title 18 section 3142 wherein a Judicial officer adopts a

personal recognizance release as the presumption in criminal matters involving misdemeanors and non-violent felonies subject to certain exceptions where there is a showing of aggravating circumstances that would endanger the safety of any other person or the community.

6. Submit the results of this review in a report back to the Board in 120 days with recommendations for best practices to improve and create a more equitable and just pretrial release system that ensures efficiency and fairness.

S: SG/Bail Reform