

AMENDED IN ASSEMBLY FEBRUARY 14, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 42**

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**Introduced by Assembly Members Bonta, Bloom, Chiu,  
Jones-Sawyer, Quirk, and Mark Stone**  
(Principal coauthors: Senators Hertzberg, Allen, Mitchell, and Wiener)  
(*Coauthor: Assembly Member Eggman*)

December 5, 2016

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*An act to amend Section 1270 of the Penal Code, relating to bail.*

LEGISLATIVE COUNSEL'S DIGEST

AB 42, as amended, Bonta. Bail reform.

Existing law provides for the procedure of approving and accepting bail, and issuing an order for the appearance and release of an arrested person. Existing law requires that bail be set in a fixed amount, as specified, and requires, in setting, reducing, or denying bail, a judge or magistrate to 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. *Existing law entitles a defendant being held for a misdemeanor offense to be released on his or her own recognizance, unless the court makes a finding on the record that his or her release would compromise public safety or would not reasonably ensure the appearance of the defendant as required.*

This bill would state the intent of the Legislature to enact legislation to safely reduce the number of people detained pretrial, while addressing racial and economic disparities in the pretrial system, to ensure that people are not held in pretrial detention simply because of their inability to afford money bail. *The bill would also 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.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Modernization of the pretrial system is urgently needed in  
4 California, where thousands of individuals held in county jails  
5 across the state have not been convicted of a crime and are detained  
6 while awaiting trial simply because they cannot afford to post  
7 money bail or pay a commercial bail bond company. In 2015, ~~63%~~  
8 *63 percent* of people in California jails were either awaiting trial  
9 or sentencing. As compared with the rest of the country, California  
10 has relied on pretrial detention at much higher rates than other  
11 states.

12 (b) California's existing pretrial detention practices allow a  
13 person's wealth rather than the person's likelihood of success on  
14 pretrial release to determine whether the person will remain in jail  
15 before the person's case is resolved. Detaining people simply due  
16 to an inability to afford money bail violates the American principles  
17 of equal protection and fundamental fairness. Nationwide, the  
18 majority of people who are unable to meet money bail fall within  
19 the poorest one-third of society.

20 (c) The consequences of pretrial detention—which include  
21 greater likelihood of innocent people pleading guilty to a crime,  
22 longer sentences upon conviction, loss of employment, income,  
23 and housing, and traumatic family disruption—disproportionately  
24 affect people of color and low-income people.

25 (d) The commercial money bail system, which requires people  
26 to pay nonrefundable deposits to private companies in order to  
27 secure release from jail, often leaves people in debt and drives  
28 them and their families further into poverty. The commercial  
29 money bail system does not improve rates of appearance in court  
30 or enhance public safety.

1 (e) California should follow the lead of the federal government  
2 and jurisdictions across the country that have stopped making  
3 wealth-based decisions on pretrial detention and instead have  
4 shifted to a system that evaluates whether an individual can be  
5 safely returned to the community as well as make required court  
6 appearances, and, if so, under what conditions.

7 (f) It is far more expensive to house a person in jail than to safely  
8 release him or her pending trial with conditions of release or  
9 pretrial supervision.

10 (g) While unnecessary pretrial detention has been found to  
11 increase the likelihood that some defendants will commit new  
12 crimes, appropriate pretrial release can reduce recidivism.

13 (h) Pretrial services programs have already been successfully  
14 implemented in many California jurisdictions, and have helped to  
15 reduce pretrial jail populations, save money, increase rates of  
16 appearance in court, and protect the public.

17 (i) Increasing the use of evidence-based practices in pretrial  
18 decisions will provide judges, law enforcement agencies, and  
19 pretrial service providers with additional tools to both assist them  
20 in assessing a defendant's likelihood of success on pretrial release  
21 and to identify and meet the needs of those defendants and the  
22 community to assure constitutional and statutory objectives.

23 (j) Modernizing pretrial practices will support the goals of the  
24 Public Safety Realignment Act of 2011 by providing additional  
25 options to manage pretrial populations using best practices  
26 developed over many years across many jurisdictions.

27 **SEC. 2.** It is the intent of the Legislature to enact legislation  
28 to safely reduce the number of people detained pretrial, while  
29 addressing racial and economic disparities in the pretrial system,  
30 to ensure that people are not held in pretrial detention simply  
31 because of their inability to afford money bail.

32 *SEC. 3. Section 1270 of the Penal Code is amended to read:*

33 1270. (a) ~~Any~~A person who has been arrested for, or charged  
34 with, an offense other than a capital offense may be released on  
35 his or her own recognizance by a court or magistrate who could  
36 release a defendant from custody upon the defendant giving  
37 *monetary* bail, including a defendant arrested upon an  
38 out-of-county warrant. A defendant who is in custody and is  
39 arraigned on a complaint alleging an offense which is a  
40 misdemeanor, and a defendant who appears before a court or

1 magistrate upon an out-of-county warrant arising out of a case  
2 involving only misdemeanors, shall be entitled to an own  
3 recognizance release unless the court makes a finding on the ~~record,~~  
4 *record that there is no condition or combination of conditions that*  
5 *would reasonably ensure public safety and the appearance of the*  
6 *defendant as required, and that, in accordance with Section 1275,*  
7 *that an own recognizance release will compromise public safety*  
8 *or will not reasonably—assure ensure the appearance of the*  
9 *defendant as required. Public safety shall be the primary*  
10 *consideration. If the court makes one of those findings, the court*  
11 *shall then set monetary bail and specify the conditions, if any,*  
12 *whereunder the defendant shall be released.*

13 (b) Article 9 (commencing with Section 1318) shall apply to  
14 any person who is released pursuant to this section.