

AMENDED IN SENATE JANUARY 17, 2017

SENATE BILL

No. 10

Introduced by Senators Hertzberg, Allen, Anderson, Atkins, Beall, Bradford, Lara, Mitchell, Monning, Wieckowski, and Wiener
(Principal coauthors: Assembly Members Bonta, Bloom, Chiu, Quirk, and Mark Stone)

December 5, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 10, as amended, Hertzberg. Bail: pretrial release.

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. Under existing law, the magistrate or commissioner to whom the application is made is authorized to set bail in an amount that he or she deems sufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, and to set bail on the terms and conditions that he or she, in his or her discretion, deems appropriate, or he or she may authorize the defendant's release on his or her own recognizance. *Existing law provides that a defendant being held for a misdemeanor offense is entitled to be released on his or her own recognizance, unless the court makes a finding on the record that an own recognizance*

release would compromise public safety or would not reasonably ensure the appearance of the defendant as required.

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.

This bill would declare the intent of the Legislature to enact legislation that would 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.

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 percent of people in California jails were either awaiting trial or
9 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 third of society.

20 (c) The consequences of pretrial detention — which include a
21 greater likelihood of innocent people pleading guilty to a crime,
22 longer sentences upon conviction, loss of employment, income,

1 and housing, and traumatic family disruption — disproportionately
2 affect people of color and low-income people.

3 (d) The commercial money bail system, which requires people
4 to pay nonrefundable deposits to private companies in order to
5 secure release from jail, often leaves people in debt and drives
6 them and their families further into poverty. The commercial
7 money bail system does not improve rates of appearance in court
8 or enhance public safety.

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

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

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

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

25 (i) Increasing the use of evidence-based practices in pretrial
26 decisions will provide judges, law enforcement agencies, and
27 pretrial service providers with additional tools to both assist them
28 in assessing a defendant's likelihood of success on pretrial release
29 and to identify and meet the needs of those defendants and the
30 community to ensure constitutional and statutory objectives.

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

35 SEC. 2. It is the intent of the Legislature to enact legislation
36 that would safely reduce the number of people detained pretrial,
37 while addressing racial and economic disparities in the pretrial
38 system, and to ensure that people are not held in pretrial detention
39 simply because of their inability to afford money bail.

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

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1 1270. (a) ~~Any~~A person who has been arrested for, or charged
2 with, an offense other than a capital offense may be released on
3 his or her own recognizance by a court or magistrate who could
4 release a defendant from custody upon the defendant giving
5 *monetary* bail, including a defendant arrested upon an
6 out-of-county warrant. A defendant who is in custody and is
7 arraigned on a complaint alleging an offense which is a
8 misdemeanor, and a defendant who appears before a court or
9 magistrate upon an out-of-county warrant arising out of a case
10 involving only misdemeanors, shall be entitled to an own
11 recognizance release unless the court makes a finding on the ~~record~~,
12 *record that there is no condition or combination of conditions that*
13 *would reasonably ensure public safety and the appearance of the*
14 *defendant as required, and that*, in accordance with Section 1275,
15 ~~that~~ an own recognizance release will compromise public safety
16 or will not reasonably ~~assure~~ *ensure* the appearance of the
17 defendant as required. Public safety shall be the primary
18 consideration. If the court makes one of those findings, the court
19 shall then set *monetary* bail and specify the conditions, if any,
20 whereunder the defendant shall be released.
21 (b) Article 9 (commencing with Section 1318) shall apply to
22 any person who is released pursuant to this section.

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