

ASSEMBLY BILL**No. 42**

**Introduced by Assembly Members Bonta, Bloom, Chiu, Quirk, and
Mark Stone**

(Principal coauthors: Senators Hertzberg, Allen, Mitchell, and Wiener)

December 5, 2016

An act relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

AB 42, as introduced, 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.

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.

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 of people in California jails were either awaiting trial or sentencing.
9 As compared with the rest of the country, California has relied on
10 pretrial detention at much higher rates than other states.

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

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

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

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

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

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

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

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

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

18 SEC. 2. It is the intent of the Legislature to enact legislation
19 to safely reduce the number of people detained pretrial, while
20 addressing racial and economic disparities in the pretrial system,
21 to ensure that people are not held in pretrial detention simply
22 because of their inability to afford money bail.