

## **SB10 - PRETRIAL RELEASE AND DETENTION**

*Referendum 1856 (18-0009), Referendum to Overturn a 2018 Law (SB10 Pretrial Release and Detention) That Replaced Money Bail System with a System Based on Public Safety Risk, is on the November 3, 2020 Ballot*

**SB10, Pretrial Release and Detention**, was passed by the California Legislature in 2018 and signed by Governor Jerry Brown. It replaces California's cash bail system with risk assessments to determine whether a detained suspect should be granted pretrial release and the conditions under which release would be granted.

A "**yes**" vote is to **uphold** the contested legislation, Senate Bill 10 (SB 10), which would replace cash bail with risk assessments for detained suspects awaiting trials.

A "**no**" vote is to **repeal** the contested legislation, Senate Bill 10 (SB 10), thus keeping in place the use of cash bail for detained suspects awaiting trials.

### **Summary**

Risk Levels: SB 10 assumes that a person will be released on his/her own recognizance or supervised own recognizance with the least restrictive monetary condition or combination of conditions that will reasonably assure public safety and the defendant's return to court.

Risk assessments would categorize suspects as low, medium, or high risk for failure to appear in court and risk to public safety. Low risk suspects would be released from jail while high risk suspects would remain jailed with the chance to argue for their release before a judge. Medium risk suspects could be released or detained, depending on specified variables.

SB10 would exempt suspects of some minor misdemeanors from needing a risk assessment prior to being released on their own recognizance, before arraignment, without review by the court.

Superior Court responsibility: SB 10 would require the superior courts to establish pretrial assessment divisions, which would be tasked with conducting risk assessments and making recommendations for conditions of release.

The Judicial Council of California, the rule-making department of the state's judicial system, would decide which risk assessment tools are valid for use. SB 10 would not itself mandate what factors the assessment tools need to consider, but the bill would state that "tools shall be demonstrated by scientific research to be accurate and reliable."

### **Background**

California utilizes a cash bail system to release detained criminal suspects before their trials. Bail is a tool to "ensure the presence of the defendant before the court." Suspects pay a cash bond to be released from jail pending trial with the promise to return to court for trial and hearings. The cash bond is repaid to suspects after their criminal trials are completed, no matter the outcome.

Superior (countywide) courts are responsible for setting cash bail amounts for crimes, often using a fixed bail schedule. Judges are permitted to adjust the cash bail amounts upward or downward. Suspects can post bail with their own money or collateral through a commercial bail bond agent, who pays the full bail amount in exchange for a non-refundable premium from a suspect. There is no California law setting or capping premiums on bail bonds. According to the California Department of Insurance, agents typically charge around 10 percent.

Superior courts have been working to ensure their criminal justice system treats criminal suspects fairly. As of 2015, 46 of California's 58 counties had some type of pretrial assessment program "with 70% of those having been established between 2010 and 2015". At least 49 counties use pretrial programs to provide judges information about the risk of releasing a defendant before trial. Some counties, including Santa Clara, San Francisco, Humboldt, Riverside and Santa Cruz, have had pretrial programs for many years.

Currently, California is operating under the Judicial Council's "Emergency Bail Schedule" which went into effect on April 6, 2020, and which will "remain in effect until 90 days after the Governor declares the state of emergency related

to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council." The schedule "promulgate(s) uniformity in the handling of certain offenses" setting the bail for all misdemeanors and felony offenses at \$0, with some exceptions listed in the schedule.

**Goal**

SB 10 is designed to make California the first state to end the use of cash bail for all detained suspects awaiting trials by substituting a newly designed Pretrial Assessment System (PAS).

**Fiscal Impact**

SB 10 would essentially close the bail business in California. It would deprive courts of the use of a tool which has saved cities and counties "millions of dollars" in enforcement over many years. Researching, establishing and providing for ongoing costs of administering Pretrial Assessment Systems will likely impose heavy costs on taxpayers. According to the American Bail Coalition, California's Supreme Court is already using \$68 million granted in 2018 for "implementing SB 10 policies" at least in part through paying a private company to develop assessments.

**Support:**

67 Democrats and one Republican in the California 2018 Legislature  
Governor Jerry Brown

**Opposition:**

Californians Against the Reckless Bail Scheme  
The American Bail Coalition  
ACLU California  
The Leadership Conference on Civil Rights  
Upturn  
NAACP  
and many others

**Referendum 1856 (18-0009), Referendum to Overturn a 2018 Law (SB10 Pretrial Release and Detention) That Replaced Money Bail System with a System Based on Public Safety Risk**, is designed to halt a state replacement for current California Superior Court pretrial processes for which courts use a range of assessment and detention tools, including bail, to ensure the return of low risk suspects to court for trial at the same time that public safety is maximized.

For more information, click [HERE](#) and [HERE](#).