



**LITTLE HOOVER COMMISSION  
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Testimony on Bail & Pretrial Services**

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Thank you for the opportunity to testify before your Commission on bail and pretrial services. The Public Safety Realignment Act of 2011 (“Realignment”), in effect, closed state prison doors to most people convicted of a low-level, non-violent offense – and therefore demands a rethinking of jail population management in our state, including the high detention rate of felony defendants.

Prior to the implementation of Realignment, 71% of people in California jails were unsentenced (compared to a 61% national average).<sup>1</sup> Nine months into the new policy, the number of unsentenced jail inmates statewide had shrunk by only about 4.5% – from 50,396 to 48,189 – but the number of sentenced inmates had swelled by nearly 40%, from 20,897 to 29,152.<sup>2</sup> (Pretrial populations vary widely across California’s 58 counties, from 87% in Merced to 55% in San Diego to 34% in Trinity.<sup>3</sup>)

The population pressures created by Realignment require that courts and jail administrators take a critical look at who is behind bars, who needs to remain there, and who is safe to release (and under what conditions). All stakeholders, including the public, must have confidence in the process and in the alternatives to incarceration that are established, making validated assessment tools and other evidence-based practices essential. The state should support counties in this challenging effort, by creating consistency in bail schedules, expanding the presumption of pretrial release (both OR and supervised), requiring use of validated risk assessment tools, mandating data collection, and allocating resources to alternatives to incarceration, including for the pretrial population.

As California adjusts to Realignment, pretrial detention practices must be revamped so that individuals awaiting trial are detained when they pose a threat to public safety or are a flight risk – not simply because they cannot afford to post bail.

**A. Pretrial Detention in California.**

California’s pretrial detention rate is significantly higher than the national average<sup>4</sup> and the proportion of pretrial detainees in California’s jails has been rising since the 1990s.<sup>5</sup> Although the overall detention rate is higher in California, its gradual increase over the past few decades can be explained by the noticeable effect of increased reliance on money bail nationally. Between 1990 and 2004, the national pretrial release rate in felony cases fell from 66% to 56%, while the percentage of individuals required to post money bail rose from 54 to 69. The result is an inverse relationship between the increased use of money bail and the decline in the pretrial release rate.<sup>6</sup> Data is not readily available to determine how many people in all of California’s jails have had bail set but simply cannot afford to post

it.<sup>7</sup> However, the number is likely to be significant, given that the national average in bail amounts has risen sharply – from \$39,800 in 1992 to \$89,900 in 2006.<sup>8</sup>

While “bail” has increasingly been equated with money, bail is actually the process by which a defendant is released from custody that reasonably assures public safety and his or her court appearance.<sup>9</sup> It can be secured when a third party agrees to stand in for the defendant if he or she does not appear for court or by nonfinancial conditions of release that reasonably assure the public safety and the defendant’s court appearance, in addition to cash or bond.<sup>10</sup> Thus, the process of bail does not and should not rely solely on the presence or absence of funds in the defendant’s bank account.

California law requires that “[i]n setting, reducing, or denying bail, the judge or magistrate *shall* 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 hearing of the case. The public safety shall be the primary consideration.”<sup>11</sup> However, California’s increasing reliance on money-based bail schedules has warped into a presumptive bail system, in which bail is routinely set at a fixed dollar amount according to the county schedule.

Bail schedules, by their very nature, take into account only the seriousness of the offense charged and reflect nothing about a defendant’s risk to public safety or probability of appearing for court. As a result, individuals who can pay are released from custody, and those who cannot remain behind bars. Courts may adjust bail higher where there is serious concern about the risk a defendant poses to the public; however, there is little incentive for courts to consider reducing bail amounts based on a defendant’s lack of risk to public safety.

California has fairly weak presumptions against pretrial detention compared to other states. Arkansas, Connecticut, Massachusetts, Minnesota, Nebraska, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, and Wyoming all have stronger statutory protections against pretrial detention. They direct judges to order release on one’s own recognizance (OR) whenever possible, require judges to impose the least restrictive condition of release that will reasonably assure the defendant’s required appearance at court, direct judges to avoid imposing financial conditions whenever possible, and designate very few offenses as non-bailable. (No apparent link can be drawn from pretrial detention and crime rates in a given state. In 2009, California had a higher violent crime rate and a slightly lower property crime rate than the average of states that release more people pretrial.<sup>12</sup>)

#### **B. California’s Money-Based Bail System Targets the Poor and Working Class and Disproportionately Impacts People of Color.**

California’s current system is a threat to equal protection under the law. Individuals without the financial means to post money bail must remain in jail, unable to go to work, attend classes, or support a family. While in custody, defendants are forced to endure lost income, employment, and housing when unable to make rent or housing payments. Individuals with families have the difficult task of arranging for dependents to stay with relatives or risk losing custody of their children, and those who depend on regular medical care suffer from disruptions in medication and may even lose their health insurance.<sup>13</sup> The mortgage crisis has further exacerbated these inequities. Historically, individuals and families used their homes as collateral to raise funds to pay for bail. However, bankruptcies, foreclosures, and decimated home values mean that fewer people are able to use their homes as collateral.<sup>14</sup>

The financial terms of bail also result in disparate outcomes based on race and ethnicity. Latino and black defendants are more likely than white defendants to be held in jail because of an inability to post bail.<sup>15</sup> A study of felony cases taken from samples drawn from 40 of the largest 75 counties in the country between 1990 and 1996 found, for example, that 27% of white defendants were held in jail throughout the pretrial period on bonds that they could not post, compared to 36% of black defendants and 44% of Hispanic defendants.<sup>16</sup> Moreover, the rapid expansion of immigration enforcement in the criminal justice system coupled with widespread misunderstanding among California law enforcement agencies regarding their legal obligations to cooperate with the Bureau of Immigration & Customs Enforcement (ICE) has resulted in widespread bias against immigrants in detention decisions. It has resulted in a two-tiered system of justice, in which noncitizens who would otherwise qualify for pretrial release are routinely denied bail, excluded from release programs, and jailed for longer periods.

### **C. California’s Money-Based Bail System Threatens the Presumption of Innocence, as Well as the Defendant’s Right to Due Process.**

Additionally, the existing system makes it more difficult to mount an adequate defense in court. Anyone charged with a crime is entitled to a number of important legal rights under federal and California law. First and foremost, those charged with crimes are presumed innocent until proven guilty; as the U.S. Supreme Court noted in *U.S. v. Salerno*, “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”<sup>17</sup> Criminal defendants also have a right to counsel, a right against self-incrimination, a right to due process of law, and a right to equal protection under the law. They also have a right to bail that is not “excessive” under both the Eighth Amendment to the U.S. Constitution and California’s own state constitution.<sup>18</sup> The current system in California threatens each one of these rights. In fact, courts outside of California have held that such presumptive bail practices violate the due process rights of defendants.<sup>19</sup>

Pretrial detention significantly impedes a defendant’s ability to meet or even communicate with defense attorneys. Moreover, the disruption of incarceration to family, employment, and community ties stigmatizes defendants.<sup>20</sup> Even the appearance of the defendant in a jail uniform may color the jury’s view of his or her innocence.<sup>21</sup> In the worst cases, the inability to post money bail may coerce defendants to plead guilty even though they are innocent.<sup>22</sup> Defendants who are detained pending trial are more likely to plead guilty and receive longer sentences if convicted, compared to those released pending trial. This is true even controlling for other relevant factors, such as current charge, criminal history, and whether represented by appointed or retained counsel.<sup>23</sup> These outcomes have nothing to do with public safety, but have everything to do with wealth and poverty.

### **D. California’s Money-Based Bail System Creates Perverse Incentives and a Powerful Lobby.**

Under the state’s current cash-based system, the judge essentially “sets a price” on a defendant’s release, leaving “market forces” to dictate that releases occur where bonds companies stand to gain the largest profits.<sup>24</sup> Where money bail is set, defendants can either post the full face value of the bail bond to be released from custody or pay a commercial bail bonds company to do so with a non-refundable fee, usually 10% of the full bond value.<sup>25</sup> Often, individuals cannot post bail that amounts to just a few hundred dollars, making them less attractive to enterprising bondsmen;<sup>26</sup> perversely, the defendants charged with the most serious crimes and, thus, with the highest bail, are put in the best bargaining position to negotiate with bonds companies for their release.<sup>27</sup>

Even where bond companies theoretically stand to lose when a client fails to appear in court, there is no research to indicate that money bail is more effective than non-financial means of release.<sup>28</sup> The Bureau of Justice Statistics has released three data advisories since the 1980's warning against the use of its data in making evaluative statements about the effectiveness of one form of pretrial release over the other, each in response to the bail bonds industry's attempt to misuse the data for such purposes.<sup>29</sup> In fact, bonds companies routinely fail to pay county courts when their clients fail to appear. According to a 2010 investigative series by National Public Radio, bonds companies in California owed the state's courts \$150 million.<sup>30</sup>

Unfortunately, California's growing reliance on a money-based bail system has not only led to steady growth in the numbers of people being detained pretrial, but nurtured an incredibly powerful commercial bail bonds industry.<sup>31</sup> Unsurprisingly, the vast majority of defendants cannot pay the full cash value of their bail bond. According to the latest Bureau of Justice Statistics data, very few – just 3% – of all felony defendants obtain release by paying the full cash value; the percentage may be even lower in California.<sup>32</sup> Among the four large California counties included in the latest Bureau of Justice Statistics study – Los Angeles, Orange, San Bernardino, and Ventura – the number of felony defendants able to post the full amount of a cash bond was between zero and one percent.<sup>33</sup>

The state's largest bail industry associations – including the California Bail Agents Association and Golden State Bail Agents Association – have spent approximately \$500,000 since 2000 to oppose any reforms that have the potential to hurt their profit margins, with the vast majority of contributions going to individual candidates.<sup>34</sup>

#### **E. Recommendation: Create Consistency, Limits on Money-Based Bail System.**

Bail amounts are currently set by Superior Courts (at the county level), creating a patchwork of 58 divergent bail schedules across the state. For example, the presumptive bail amount for simple drug possession is \$5,000 in Fresno and Sacramento, \$10,000 in Alameda and Los Angeles, and \$25,000 in San Bernardino and in Tulare.<sup>35</sup> While these disparate dollar amounts may reflect the divergent views of county judiciaries on the seriousness of the charged offense – here, drug possession – each one fails to take into account the public safety and flight risk presented by each particular defendant. Even more absurd are the bail schedules in counties like Los Angeles that assign a presumptive bail amount for virtually every offense, where the bail amount for rape is \$100,000, murder is set at \$1,000,000, and release can be obtained simply by posting the fixed amount.<sup>36</sup>

As long as each county sets its own bail schedule, Californians will face disparate and arbitrary bail amounts across the state – and therefore also potentially different fates. If arrested in one county, they would be able to return to their family and employment; if arrested in another county, their lack of financial means could mean weeks or months of being locked up. Instead, the state should consider either taking on the responsibility for setting a statewide bail schedule, in order to ensure consistency, or providing more guidance to Superior Courts in setting local bail schedules as well as in applying them.

Most critically, counties need alternatives to the money-based bail system that they can have confidence in and will therefore utilize. The money-based bail system need not be entirely eliminated; however, it can no longer be allowed to overshadow the more important evaluation of public safety risk.

#### **F. Recommendation: Use Validated Risk Assessment Tools for Pretrial Release Decisions.**

The far better alternative to a money-based bail system is one based primarily on the defendant's risk. In a risk-based system, release *and* detention decisions are made to minimize the probability that a defendant will be re-arrested during the pretrial period or fail to appear in court.<sup>37</sup> Employed effectively, a validated risk assessment tool is essential to this process.

Using data from individuals with similar characteristics, a risk assessment tool calculates the probability that an individual defendant will be re-arrested prior to trial or fail to appear for court using factors that include the defendant's current charge, whether the defendant had outstanding warrants at the time of arrest, whether the defendant had pending charges at the time of arrest, his or her history of criminal convictions, previous instances of failure to appear in court, a history of violence, residential stability, employment stability, community ties, and a history of substance abuse.<sup>38</sup> The money-based bail system, with bail amounts based on pre-set schedules, fails to take any of these risk factors into account. This information helps corrections officials and courts determine whether individuals charged with an offense should remain incarcerated before trial or can be released on their own recognizance or with some conditions of supervision. The accuracy of the risk assessment tool in assessing defendants is then "validated" based on the actual outcomes of individuals in the local population.

Similarly, for the sentenced population, assessment tools that measure both the offender's risks and needs – i.e. what the individual needs to avoid recidivism – can provide guidance concerning whether an individual should remain in jail, or, if they do not pose a significant risk to public safety, whether they could complete their sentence in home detention, on work furlough, or under another appropriate form of supervision in the community. Case managers and supervisors can also use these tools to match the offender to rehabilitative services to address his or her criminogenic needs that span the period of incarceration, the period of post-release supervision, and ultimately re-entry into the community. This kind of "end-to-end" case management can ensure that the resources counties dedicate to rehabilitation have the greatest impact possible on reducing recidivism rates.

Both the use of a risk assessment tool for the pretrial population and a risk and needs assessment for the sentenced population carry out the legislative intent of Realignment to move the state towards practices that have been proven effective with scientific evidence and towards a system of corrections that can operate to rehabilitate individuals in the community.<sup>39</sup>

#### **G. Recommendation: Expand OR and Supervised Pretrial Release.**

Since 2000, the rates of felony defendants released on their own recognizance (OR) – i.e. upon the defendant's written promise to appear in court – have dropped in the state's largest counties since 2000.<sup>40</sup> For example, from 2000 to 2006, the rates of pretrial release for felony defendants in Los Angeles and Orange Counties dropped from 24% and 25%, respectively, to 11% each. During this time period, only 1% to 2% of felony defendants were released on OR with any kind of condition.<sup>41</sup> This form of release is also known as supervised OR, where felony defendants are not required to post any money, but are required to comply with the conditions set by the court until their court date, such as regular phone calls to a probation officer or drug testing.

Even where the court is supplied with information about a particular individual's risk, some courts still refuse to release defendants by non-financial means. A report by the Sacramento Sheriff's Department shows that only 206 felony defendants who were interviewed by the Sheriff's Department in Sacramento County were eventually granted unsupervised release, representing just 4% of all felony bookings March through June 2012.<sup>42</sup> In San Mateo County, of the 1,138 felony defendants determined

to be eligible for release by the Sheriff and Probation, the court released only 120 on their own recognizance.<sup>43</sup>

Because felony defendants are the primary targets of pretrial detention under the existing system – compare roughly 6,400 misdemeanor pretrial inmates to 41,000 felony pretrial inmates in California jails as of June 2012<sup>44</sup> – improving pretrial systems in the state requires expanding the presumption of OR release to felony charges, starting with those low-level felony charges that are non-violent, non-serious, and non-sex offenses. Here, the presumption would stand unless a judge finds that the defendant presents a risk of flight or danger to the community. Other effective statewide reforms would include providing more direction to courts concerning the factors to be considered when ordering pretrial release and enabling other county agencies to assist the court in performing pretrial investigations of defendants.

#### **H. Recommendation: Collect Data to Support Adoption of Evidence-Based Practices.**

The stated intent of Realignment is to promote evidence-based criminal justice practices. This requires data collection and analysis. The state, through legislation or through the Board of State and Community Corrections (BSCC), should require standardized data collection and analysis across the 58 counties and partner with academic institutions, think-tanks, and advocacy organizations to develop a robust outcome measurement program that enables policymakers to monitor, among other things, utilization of a validated risk assessment tool, the number of defendants investigated for release or detention, and public safety and court appearance outcomes. Without this information, counties will not fully benefit from their own and other counties' experiences, including successful programs worthy of further study or programs that need to be revised.

#### **I. Pretrial Population Management is Key to Protecting Public Safety.**

Public Safety Realignment is pressuring counties to rethink effective jail population management and to adopt evidence-based practices to accomplish it. Not all counties have the collective political will to accomplish the task. But all counties have work to do in making informed, objective pretrial detention decisions based on public safety considerations. Doing so will address inequities inherent in the current money-based system, improve public safety outcomes, and cost less than incarceration. With growing jail populations and limited resources, the state must recommit to the adoption of evidence-based practices at the county level by adopting them at the state level, by creating consistency in bail schedules, expanding the presumption of pretrial release (both OR and supervised), requiring use of validated risk assessment tools, mandating data collection, and allocating resources to alternatives to incarceration, including for the pretrial population.

## APPENDIX: California Case Studies in Pretrial Services.

In Santa Cruz County, overcrowding in the Main Jail led to a 2004 Grand Jury Report that deemed the jail dangerous for inmates and staff alike. In 2005, Probation began working with the Sheriff's detention staff to introduce a validated risk assessment tool to determine which defendants could be recommended for release on their own recognizance (OR). After two years, the county found that fully 92% of supervised pretrial participants did not commit any new offense, and 89% made all of their court appearances. Ninety jail beds a day were saved – resulting in a 25% reduction in the average daily population. Over the past several years, the percentage of pretrial inmates in Santa Cruz has remained around 60% or below.<sup>45</sup>

In 2009, the Yolo County Probation Department implemented pretrial services in an attempt to alleviate overcrowding in the jail, which had been under a federally mandated population cap. In just two years, the county significantly reduced the number of pretrial inmates in the jail, while doubling its capacity to house convicted offenders serving their sentences.<sup>46</sup> Virtually all, or 95%, of the defendants released under Yolo County's pretrial program did not commit a new offense prior to their court date, and 92% made every single one of their court appearances. The Court accepted 90% of all recommendations generated by the program. According to Superior Court Judges, those released on supervision would not have been released but for the program.<sup>47</sup>

With the oldest pretrial services office in the state, Santa Clara County manages approximately 640 pretrial defendants on supervised release and 400 pretrial defendants on straight OR release at any given time.<sup>48</sup> Ninety-eight percent of these defendants are not charged with a new offense during the pretrial period, 88% make all of their court appearances, and 90% commit absolutely no technical violation of their release, such as testing positive on a drug test, missing a counseling session, or violating a no-contact order. In the last six months of 2011 alone, the Office of Pretrial Services saved the county 197,051 jail days – or \$31.3 million in incarceration costs.<sup>49</sup> Unsurprisingly, the California bail industry has attempted to discredit the effectiveness of the county's programs in an effort to oppose publicly funded pretrial services programs, despite annual statistics and a 2012 audit indicating the opposite.<sup>50</sup>

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<sup>1</sup> The Bureau of Justice Statistics reports that at mid-year 2011, 60.6% of local jail inmates were unconvicted (see Bureau of Justice Statistics, *Jail Inmates at Midyear 2011 - Statistical Tables* (Apr. 26, 2012), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/jim11st.pdf>. For California-specific data, see Board of State and Community Corrections, *Jail Profile Survey Annual Report* (2002). Board of State and Community Corrections, *Jail Profile Survey Third Quarter Results* (2011), available at <http://www.bscc.ca.gov/programs-and-services/fso/resources/jail-profile-survey>.

<sup>2</sup> Board of State and Community Corrections, *Jail Profile Survey Second Quarter Results* (2012), available at <http://www.bscc.ca.gov/programs-and-services/fso/resources/jail-profile-survey>.

<sup>3</sup> *Id.*

<sup>4</sup> BJS Midyear 2011, *supra* note 1.

<sup>5</sup> Jail Profile Surveys 2011 and 2002, *supra* note 1.

<sup>6</sup> John Clark, *The Impact of Money Bail on Jail Bed Usage*, *American Jails*, July/August 2010, 47-48, <http://www.pretrial.org/Reports/PJI%20Reports/AJA%20Money%20Bail%20Impact%202010.pdf>.

<sup>7</sup> Thomas H. Cohen and Tracy Kyckelhahn, Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties*, 2006 25, 37 (2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fdluc06.pdf>. The latest BJS report shows that 69% of

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the pretrial detainees in Los Angeles County are held in lieu of bail, 68% are held in lieu of bail in Orange, 48% are held in lieu of bail in San Bernardino, and 59% are held in lieu of bail in Ventura.

<sup>8</sup> Melissa Neal, Justice Policy Institute, *Bail Fail: Why the U.S. Should End the Practice of Using Money Bail* 14 (2012), <http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf>.

<sup>9</sup> Timothy r. Schnacke, Pretrial Justice Institute, Glossary of Terms and Phrases Relating to Bail and the Pretrial Release or Detention Decision 3 (2011), <http://www.pretrial.org/Reports/PJI%20Reports/PJI%20Glossary%20of%20Terms%202011.pdf>; page 3; Black's Law Dictionary (9th ed. 2009), available at Westlaw BLACKS.

<sup>10</sup> *Sawyer v. Barbour*, 142 Cal. App. 2d 827, 300 (2d Dist. 1956).

<sup>11</sup> Cal. Penal Code § 1275 (West 2013); see Cal. Const. art. I, §§ 12, 28(b), 28(f); Cal. Penal Code §§ 1269c, 1275, *Clark v. Superior Court*, 11 Cal. App. 4th 455, 458 (1992), *In re Christie*, 92 Cal. App. 4th 1105, 1107 (2001), *In re Burnette*, 35 Cal. 2d 358, 360 (1939), *People v. Gilliam*, 41 Cal. 3d 181, 191 (1974), and *Ex Parte Ruef*, 7 Cal. 750, 753 (1908); and California Judges Benchguide § 55.3.

<sup>12</sup> U.S. Census Bureau, 2012 Statistical Abstract, Table 308. Crime Rates by State, 2008 and 2009, and by Type, 2009, available at <http://www.census.gov/compendia/statab/2012/tables/12s0308.pdf> (2012).

<sup>13</sup> Neal, *supra* note 8.

<sup>14</sup> Dawn Wotapka, *Underwater and in the Tank: Defendants Find It Tougher to Make Bail as Bond Agents Shun Homes as Collateral* (Apr. 25, 2011), Wall Street Journal, available at <http://online.wsj.com/article/SB10001424052748703648304576265422469205008.html>.

<sup>15</sup> Stephen Demuth, *Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A comparison of Hispanic, Black, and White Felony Arrestees*, 41 *Criminology* 873-907 (2003).

<sup>16</sup> *Id.*

<sup>17</sup> *U.S. v. Salerno*, 481 U.S. 739, 755 (1987).

<sup>18</sup> See U.S. Const. art. VIII; Cal. Const. art. I, § 12(c). For an overview of the foundations for these legal principles, see: Marie VanNostrand, Crime and Justice Institute and the National Institute of Corrections, *Legal and evidence-based practices: Application of legal principles, laws and research to the field of pretrial services* (Apr. 2007), p. 5-9, available at <http://www.dcjs.virginia.gov/corrections/documents/legalAndEvidence.pdf>.

<sup>19</sup> See Lindsey Carlson, *Bail Schedules: A Violation of Judicial Discretion?*, 26 *Criminal Justice* 1 (2011), available at [http://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_magazine/cjsp11\\_bail.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsp11_bail.authcheckdam.pdf), discussing *Clark v. Hall*, 53 P.3d 416 (Okla. 2002) and *Pelekai v. White*, 75 Haw. 357 (1993).

<sup>20</sup> *Id.*

<sup>21</sup> Neal, *supra* note 8, at 13.

<sup>22</sup> *Id.* at 25.

<sup>23</sup> Demuth, *supra* note 15. See also E. Britt Patterson and Michael J. Lynch, *Bias in formalized bail procedures*, *Race and Criminal Justice* (1991); S.H. Clark and S.T. Kurtz *The Importance of Interim Decisions to Felony Trial Court Dispositions*, *Journal of Criminal Law and Criminology*, 74 (1983), p. 476-518; A. Rankin, *The Effects of Pretrial Detention*, *New York University Law Review*, 39 (1964); Caleb Foote, *Compelling Appearance in Court – Administration of Bail in Philadelphia*, *University of Pennsylvania Law Review* 102 (1954), p. 1031-1079.

<sup>24</sup> Pretrial Justice Institute, *Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process* 1, 3 (2012), <http://www.pretrial.org/Featured%20Resources%20Documents/Rational%20and%20Transparent%20Bail%20Decision%20Making.pdf>.

<sup>25</sup> Pretrial Justice Institute, *supra* note 24, at 6.

<sup>26</sup> *Id.* (“In New York City alone, a recent study identified over 11,000 defendants charged with misdemeanor offenses in a one-year period who sat in jail until their cases were disposed of because they could not raise \$100 or less.”) See Los Angeles Superior Court Felony Bail Schedule, <http://www.lasuperiorcourt.org/bail/pdf/felony.pdf>.

<sup>27</sup> Pretrial Justice Institute, *supra* note 24, at 7.

<sup>28</sup> Bureau of Justice Statistics, *State Court Processing Statistics Data Limitations* (2010), [http://bjs.ojp.usdoj.gov/content/pub/pdf/scpsdl\\_da.pdf](http://bjs.ojp.usdoj.gov/content/pub/pdf/scpsdl_da.pdf).



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- <sup>29</sup> For bail industry's misuse of BJS statistics, see Michael K. Block, *The Effectiveness and Cost of Secured and Unsecured Pretrial Release in California's Large Urban Counties: 1990-2000* (2005), available at <http://www.pb.us.com/associations/4643/files/1-2005%20Block%20Bail%20Report.pdf>.
- <sup>30</sup> Laura Sullivan, *Bail Burden Keeps U.S. Jails Stuffed With Inmates* (Jan. 21, 2010), NPR, available at <http://www.npr.org/2010/01/21/122725771/Bail-Burden-Keeps-U-S-Jails-Stuffed-With-Inmates>.
- <sup>31</sup> See also John Clark, *The Impact of Money Bail on Jail Bed Usage*, *American Jails*, July/August 2010, 51 <http://www.pretrial.org/Reports/PJI%20Reports/AJA%20Money%20Bail%20Impact%202010.pdf> (showing that most people in CA jails are held in lieu of bail).
- <sup>32</sup> Thomas H. Cohen and Brian A. Reaves, *Pretrial Release of Felony Defendants in State Courts*, *State Court Processing Statistics, 1990-2004* (2007); and Thomas H. Cohen and Tracy Kyckelhahn, *Felony Defendants in Large Urban Counties*, 2006 25, 37 (2010).
- <sup>33</sup> *Id.*
- <sup>34</sup> Amanda Gullings, Center on Juvenile and Criminal Justice, *The Commercial Bail Industry: Profit or Public Safety?* 6-7 (2012), [http://www.cjcj.org/files/Profit\\_or\\_Public\\_Safety.pdf](http://www.cjcj.org/files/Profit_or_Public_Safety.pdf).
- <sup>35</sup> Obtained from bail schedules available on each county's Superior Court website.
- <sup>36</sup> See Los Angeles Superior Court Felony Bail Schedule, <http://www.lasuperiorcourt.org/bail/pdf/felony.pdf>.
- <sup>37</sup> National Association of Pretrial Services Agencies, *Standards on Pretrial Release* 5 (3d ed. 2004). American Bar Association, *Criminal Justice Section Standard 10-1.1-10-1.2* ("The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. . . . In deciding pretrial release, the judicial officer should assign the least restrictive condition(s) of release . . .")
- <sup>38</sup> VanNostrand, *supra* note 18.
- <sup>39</sup> Cal. Penal Code § 17.5 (West 2013).
- <sup>40</sup> Bureau of Justice Statistics, *State Court Processing Statistics, Felony Defendants in Large Urban Counties*, 2000, 2002, and 2006, available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=27>.
- <sup>41</sup> *Id.*
- <sup>42</sup> Jamie Lewis, Sacramento County Sheriff's Department, *AB 109 Pretrial and Supervised OR Release Program Proposal* (Jul. 12, 2012).
- <sup>43</sup> Letter from Fidel Rodriguez, San Mateo County Adult Probation Department, *Monthly Statistics from January to December 2010* (Nov. 9, 2011).
- <sup>44</sup> Jail Profile Survey Second Quarter 2012, *supra* note 2.
- <sup>45</sup> Scott MacDonald and Charlie E. Smith, *Addressing Jail Overcrowding: Safe Alternatives to Incarceration through Justice Partnership* (Sep. 21, 2011). Powerpoint presentation at *Solving the Crisis: Innovations in Corrections in California*, slide 8, available at <http://www.calrealignment.org/about-us/september-21st-conference.html>.
- <sup>46</sup> Board of State and Community Corrections, *Jail Profile Survey Third Quarter – 2011 Survey Result & Second Quarter – 2012 Survey Results*, <http://www.bscc.ca.gov/programs-and-services/fso/resources/jail-profile-survey>.
- <sup>47</sup> *Id.*
- <sup>48</sup> Santa Clara Board of Supervisors, *Management Audit Of the Office of Pretrial Services 9* (2012), available at <http://www.sccgov.org/sites/bos/Management%20Audit/Documents/PTSFinalReport.pdf>.
- <sup>49</sup> Stephen Rowe, Santa Clara County Office of Pretrial Services, *Appearance, Safety, and Technical Violation Rates through March 2012* (2012).
- <sup>50</sup> Gullings, *supra* note 34, at 7.