

Pretrial Detention Reform (PDR) Workgroup

Recommendations to the Chief Justice



JUDICIAL COUNCIL OF CALIFORNIA

Presenters:

- Hon. Brian J. Back, PDR Co-Chair,
Superior Court of Ventura County
- Hon. Lisa R. Rodriguez, PDR Co-Chair,
Superior Court of San Diego County
- Hon. Brian L. McCabe, PDR Member,
Superior Court of Merced County
- Ms. Shelley Curran, Director, Criminal Justice
Services, Judicial Council of California



PDR Workgroup

- Chief Justice established the Workgroup in October 2016
- 11 Judges and 1 Court Executive Office
- Charged the Workgroup with making recommendations, if needed, on how courts may better identify ways to make release decisions that will:
 - treat people fairly
 - protect the public
 - maximize court appearances



PDR Workgroup

- Final Report submitted to the Chief Justice in October 2016
- Chief Justice requested that PDR present the findings to the Judicial Council



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PDR Workgroup Members

- Hon. Mark Boessenecker, Presiding Judge, Superior Court of Napa County
- Mr. Alex Calvo, Court Executive Officer, Superior Court of Santa Cruz County
- Hon. Arturo Castro, Judge, Superior Court of Alameda County
- Hon. Hilary A. Chittick, Judge, Superior County of Fresno County
- Hon. George C. Eskin (*ret.*), Retired Judge, Superior Court of Santa Barbara County
- Hon. Scott M. Gordon, Judge, Superior Court of Los Angeles County
- Hon. Teri L. Jackson, Presiding Judge, Superior Court of San Francisco County
- Hon. Brian L. McCabe, Judge, Superior Court of Merced County
- Hon. Serena R. Murillo, Judge, Superior Court of Los Angeles County
- Hon. Risë Jones Pichon, Judge, Superior Court of Santa Clara County





Workgroup Process

- Asked members to start with a clean slate and maintain a statewide perspective.
- First asked the question, *“Does the system need to be changed?”*
- *“If yes, then how?”*



Workgroup Process

- Presentations from over 40 speakers
 - State and National Experts
 - Justice System Partners
 - Commercial Bail Industry
 - State and Local Regulators
 - Victims and Civil Rights Advocates
 - Jurisdictions that have undertaken pretrial reform efforts





Consistent Message

Consensus: the system
needs to be changed.



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Origins of Bail

- Foundation of U.S. Bail System
 - Presumption of innocence
 - Right to personal freedom
- Most states protected the right to bail through “sufficient sureties”, except for capital offenses.



Origins of Bail

- 19th century — U.S. evolved to a commercial sureties system
 - Deposit of money or pledge of assets became principal condition of release
- Bail Reform Act of 1966
 - Consideration of public safety
- Bail Reform Act of 1984
 - Permits the use of pretrial detention in limited instances
 - Upheld as constitutional in *United States vs. Salerno*



California Law

- California Constitution
 - Article 1, section 12
 - Article 1, section 28 (f) (3)
- Proposition 4, Bail (1982)
- Proposition 9, Victims' Bill of Rights, Act of 2008 (Marsy's Law)



Bail Bonds by the Numbers

- California Department of Insurance conducted an examination of California bail bonds (2011-2013)
 - 205,000 bail bonds issued annually with a face value of \$4.4 billion
 - \$924 million in total gross premiums collected annually *(13 of 17 sureties reporting)*
 - \$308.2 million in nonrefundable premiums collected annually
 - \$87.2 million remitted by bail agents and bail agencies to their sureties



Bail Bonds by the Numbers: Los Angeles (May 2016 to May 2017)

- \$1.73 billion in sureties posted
 - Approximately \$173 million in nonrefundable deposits
- \$13.6 million in cash bail deposited with the courts
- \$3.8 million ordered forfeited by the court
- \$ 2.7 million collected
 - \$ 1.4 million from surety companies
 - \$ 1.3 million from cash bail deposited with the court



Bail Realities

- A person who posts bail must pay the nonrefundable fee, even if charges are never filed.
- People charged with very serious and/or violent offenses are generally released on bail with no supervision and may commit serious crimes while out on bail.
- Women pay a disproportionate number of bonds, and quite often, victims shoulder that burden.
- If a defendant commits a new crime while out on bail, or fails to appear for court, the forfeiture procedure is so complex that the defendant and/or the bail bond company very rarely forfeits the bond.



Recommendation #1

- Implement a Robust Risk-Based Pretrial Assessment and Supervising System to Replace the Current Monetary Bail System
- California's current pretrial and release bases a person's liberty on available financial resources rather than the risk posed to public safety.





Recommendation #2

- Expand the Use of Risk-Based Preventive Detention
- In the current pretrial system, the only factor that decides release before arraignment is whether the accused has the financial resources to post bond.



Recommendation #3

- Establish Pretrial Services in Every County
 - Maximize the safety of the community, and minimize the risk of nonappearance at court proceedings.
 - Services must include the comprehensive use of a validated risk assessment instrument, monitoring, and supervision.



Recommendation #4

- Use a Validated Pretrial Risk Assessment Tool
 - Help inform pretrial determinations
 - Assist the court in fashioning conditions or terms of pretrial release
 - Judicial officers **must** remain the final authority in making release or detention decisions.



Recommendation #5

- Make Early Release and Detention Decisions
 - Procedures must preserve due process and promote efficient and effective justice system procedures.
 - Longer pretrial detentions are associated with an array of negative impacts on the defendant and his/her family.
 - Cite-and-release policies and procedures currently used by law enforcement and prearrest diversion programs should continue.



Recommendation #6

- Integrate Victim Rights into the System
 - Victims have a constitutional right to be heard regarding pretrial release decisions and their input is essential to a well-functioning system.



Recommendation #7

- Apply Pretrial Procedures to Violations of Community Supervision
 - Help address jail population management issues.
 - Consider the pretrial release and detention screening procedures for defendants alleged to be in violation of the conditions of supervision.



Recommendation #8

- Provide Adequate Funding and Resources
 - Significant initial investment of resources and ongoing funding are essential.
 - Without adequate and consistent funding, the system cannot be effective.



Recommendation #9

- Deliver Consistent and Comprehensive Education
 - Judges, court staff, local justice system partners, and the community must be educated on the development and implementation of a pretrial release and supervision system.
 - There should be continuing education regarding both implicit and explicit bias to ensure that the pretrial system or assessment tools do not perpetuate bias.



Recommendation #10

- Adopt a New Framework of Legislation and Rules of Court to Implement These Recommendations
 - A sustainable structure can only be built on a solid foundation and must not be grafted onto the current complex statutory framework of monetary bail.



Chief Justice's statement, in support of the PDR Report...

"...I firmly support the conclusion that California's current pretrial release and detention system unnecessarily compromises victim and public safety because it bases an arrestee's liberty on financial resources rather than the likelihood of future criminal behavior and exacerbates socioeconomic disparities and racial bias."



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