

PROPOSITION 25:

REFERENDUM TO OVERTURN A 2018 LAW THAT REPLACED MONEY BAIL SYSTEM WITH A SYSTEM BASED ON PUBLIC SAFETY RISK. Referendum.

Secretary of State Ballot Summary:

A referendum will be placed on the next statewide ballot requiring a majority of voters to approve a 2018 state law before it can take effect. The 2018 law replaces the money bail system with a system for pretrial release from jail based on a determination of public safety or flight risk, and limits pretrial detention for most misdemeanors.

Background:

As of 2019, California had a pre-trial release system that allowed for defendants to be released on their own recognizance or release after depositing cash bail. Cash bail requires defendants to pay a bond to be released from jail pending trial with the promise to return to court. The state's countywide courts set cash bail amounts for crimes, and judges were permitted to adjust the cash bail amounts upward or downward. Defendants post bail with their own money or through a commercial bail bond agent, who pays the full bail amount in exchange for a non-refundable premium. In California, there is no law setting or capping premiums on bail bonds and agents often charge close to 10%.

Critics of the cash bail system have highlighted the negative impact on communities of color and low-income individuals. People who have money are released from county jail and can return to their lives, while those who can't afford bail remain incarcerated, and are more likely to plead guilty in order to get out of custody. A defendant who does not have the funds to make bail may lose their job, custody of children or face other penalties. The current system results in California jails being crowded with individuals who are occupying jail beds while they are facing criminal charges. In addition, the determination as to who remains detained while awaiting resolution of criminal charges is made based on money, and not whether the person is a present danger to the community or at high risk of committing crimes while out on bail.

In response to criticism of the cash bail system, the Legislature passed, and the Governor signed, SB 10 (Hertzberg) into law, which establishes a new state pretrial process that eliminated bail. Unlike the existing system, SB 10 required the release individuals not on bail but under a new pre-trial process. The bill mandated that individuals booked for most misdemeanors to be released from county jail within 12 hours of booking. Other individuals arrested for certain offenses would be evaluated by court or county assessment staff using tools to determine their risk of not appearing in court or committing an offense if released. Low risk individuals would be released and individuals determined to be medium risk could be released prior to arraignment by assessment staff or a judge. Released individuals could be subject to supervision requirements, such as regular check-ins with county probation or other staff, which could be modified by the court for good cause. Individuals determined to be high risk—as well as individuals who meet certain criteria—would be detained in county jail until arraignment.

At arraignment, individuals would generally be released unless the district attorney requests a hearing seeking to detain them until trial. The court could only order an individual to be detained under certain conditions—such as determining that there are no supervision requirements (such as electronic monitoring) that can be imposed to ensure the individual's appearance in court and public safety. SB 10 would also prohibit the charging of any fees for any supervision requirements that are imposed as a condition of release.

Opponents to SB 10, mainly the bail bond industry, collected signatures after the passage of SB 10 to put a referendum on the ballot to overturn the law.

Legislative Analyst and Director of Finance estimate of fiscal impact:

Increased annual state costs of roughly \$10 million for a new state agency to monitor compliance and enforcement of consumer privacy laws. Increased state costs, potentially reaching the low millions of dollars annually, from increased workload to DOJ and the state courts, some or all of which would be offset by penalty revenues. Unknown impact on state and local tax revenues due to economic effects resulting from new requirements on businesses to protect consumer information.

Support and Opposition:

Supporters, which mean they want a YES vote, include End Predatory & Unfair Money Bail, a coalition of justice reform and labor organizations, elected officials and many other groups. They argue that preserving SB 10 and the end of cash bail is imperative because without it the state will waste an estimated \$1.8 billion every year to keep people with low-level charges, who can't afford bail, locked up. They also argue that this referendum will hurt public safety because pretrial release is based on whether defendants can afford bail, rather than whether they pose any real threat to society. Supporters also say that the cash bail system is fundamentally unfair system that forces innocent people to either stay in jail until their trial, or plead guilty to crimes they didn't commit because they can't afford bail and they can't afford to lose their job, their home, or their family.

Opposition, which means they want a NO vote, includes a coalition of bail agents and other bail industry groups. They argue that SB 10 is costly and reckless and not the right way to do bail reform. They argue that the biggest flaw in SB 10 is the use of computer programs to make important justice decisions—the same type of algorithms that Big Data companies use. They contend that the use of algorithms has been proven to discriminate against the poor, minorities and people who live in certain neighborhoods.

Prior Positions:

The Federation took a support position on Proposition 47 (2014) that changed non-serious and non-violent crimes from felonies or wobblers to misdemeanors and a support on Proposition 57 (2016) that increased parole chances for felons convicted of nonviolent crimes and gave them more opportunities to earn sentence-reduction credits for good behavior.

A YES vote on this measure means:

Voters would uphold the contested legislation, SB 10, which would replace cash bail with risk assessments for detained suspects awaiting trials.

A NO vote on this measure means:

Voters would repeal the contested legislation, SB 10, thus keeping in place the use of cash bail for detained suspects awaiting trials.