

Chief Justice's Pretrial Detention Reform (PDR) Workgroup



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Presenters:

- Hon. Lisa R. Rodriguez, PDR Co-Chair, Superior Court of San Diego County
- Ms. Shelley Curran, Director, Criminal Justice Services, Judicial Council of California



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Origins of Bail

Presumption of innocence

Right to personal freedom

Foundation of U.S. Bail System



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Origins of Bail

Most states protected the right to bail through ***sufficient sureties***, except for capital offenses.

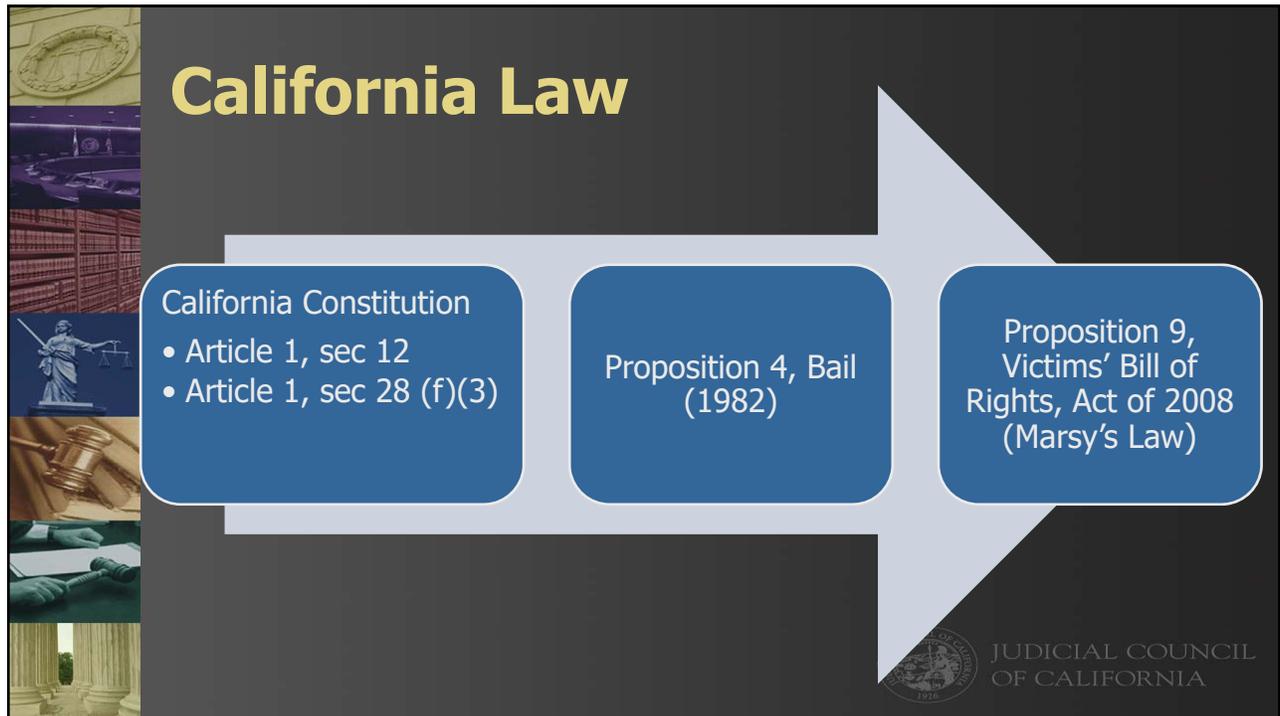
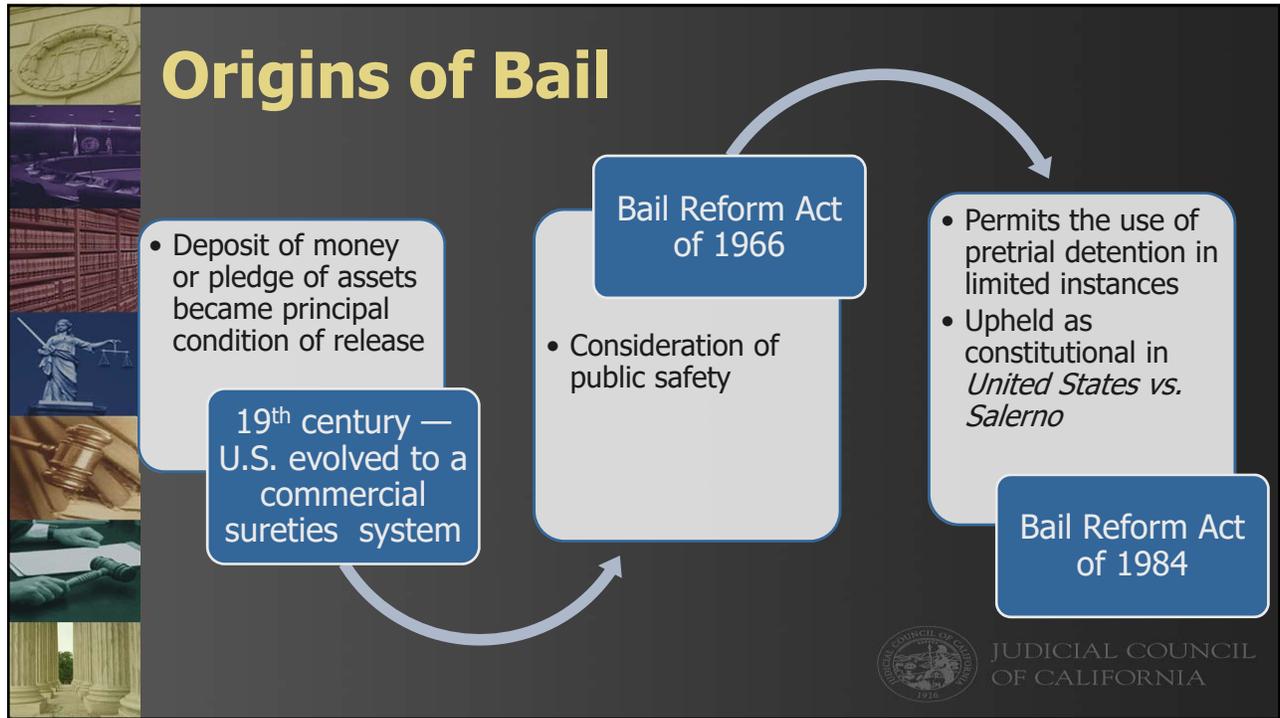
Included unsecured bonds

Did not contemplate profit or indemnification

Money not a factor in release or detention



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Is there a need for bail reform?



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Bail Realities

A person who posts bail must pay the nonrefundable fee, even if charges are never filed.

Santa Clara County — January-June, 2016

- 265 people arrested were never charged
- Approx. \$500,000 in nonrefundable bail bond fees



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Bail Realities

Women pay a disproportionate number of bonds, and quite often, victims shoulder that burden.

San Francisco County — analysis of all bail bonds posted January 1-August 31, 2016 showed almost all cosigners, or indemnitors were women.



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Bail Realities

Racial and Ethnic Disparities

African American and Hispanic defendants are more likely to be detained pretrial than are white defendants and less likely to be able to post money bail as a condition of release.



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Bail Realities

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.

Violent Offenses

- 16% were released pretrial
- 68% of those released secured release by posting bail

High-level Felonies

- 21.7% secured release pretrial
- 63% of those secured release by posting bail



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Bail Realities

If defendant commits a new crime or fails to appear, the forfeiture procedure is so complex that the defendant and/or the bail bond company very rarely forfeits the bond.

Los Angeles — May 2016-May 2017

- \$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 by the court



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Even a short period of detention negatively impacts:

Employment

Housing

Child
Custody

Access to
Heath Care

Case
Outcomes
and
Sentences



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2013 Pretrial Justice Institute Study Critical Findings

Longer pretrial detentions are associated with the likelihood of FTA pending trial. Holds true most for defendants deemed low risk.

The longer low-risk defendants are detained, the more likely they are to have new criminal activity pending trial.

Being detained pretrial for two days or more is related to the likelihood of post-disposition recidivism.

Generally, as the length of time in pretrial detention increases, so does the likelihood of recidivism.



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Is there a need for bail reform?



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PDR Workgroup

Recognizing the central role of the court, the Chief Justice established the PDR Workgroup in October, 2016

11 Judges and 1 Court Executive Office

Given a year to complete its charge

Final Report submitted to Chief Justice October 2017



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PDR Workgroup Charge

Provide recommendations on how courts may better identify ways to make release decisions that will:

treat people fairly

protect the public

maximize court appearances



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Workgroup Process

Asked members to start with a clean slate and maintain a statewide perspective.

“Does the system need to be changed?”

“If yes, then how?”



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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
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Consistent Message

Consensus: the system needs to be changed.



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Workgroup Evolution and Conclusion:

California's current bail system unnecessarily compromises victim and public safety because it bases a person's liberty on financial resources rather than likelihood of future criminal behavior and exacerbates socioeconomic disparities and racial bias.



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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.



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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.



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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.



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Recommendation #4

Use a Validated Pretrial Risk Assessment Tool

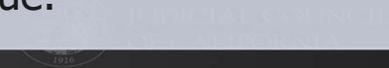
- Help inform pretrial determinations
- Assist the court in fashioning conditions or terms of pretrial release
- Judicial officers **must** remain the final authority in making release or detention decisions.



Recommendation #5

Make Early Release and Detention Decisions

- Procedures must preserve due process & promote efficient and effective justice system procedures.
- Longer pretrial detentions can have 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.



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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.



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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.



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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.



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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.



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RECIDIVISM REDUCTION FUND



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Recidivism Reduction Fund (RRF)

- \$15.4 million designated to 39 local court projects
- 11 pretrial programs
- Annual Report submitted to the Legislature in October 2017
- Data period — July 1, 2015-April 30, 2017

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Initial Outcomes

30,000 defendants assessed

11% percent of defendants placed in supervision

- 31.8% Low Risk
- 44.8% Medium Risk
- 23.4% High Risk

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Outcomes: Supervision Programs

Failure to Appear (FTA) Rates are Lower

2.6% to 16.7%
range of FTA

Rearrest Rates are lower

< than 50
rearrests

< 2% rearrest
rate



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QUESTIONS?



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