



Alliance of California Judges

August 15, 2017

The Honorable Robert Hertzberg
Member of the State Senate
State Capitol, Room 4038
Sacramento, CA 95814

Re: Senate Bill 10

Dear Senator Hertzberg:

As President of the Alliance of California Judges, a group of more than 500 judges and retired judges from across the state, I wrote in May to express our strong opposition to Assembly Bill 42 and Senate Bill 10, well-intended but misguided attempts to overhaul the current system of money bail. AB 42 was defeated in the Assembly, but SB 10 has recently been amended. Unfortunately, these amendments have failed to address the bill's shortcomings; in fact, they seem to be entirely cosmetic.

Our member judges make thousands of rulings on bail issues every day. We know that our current bail system needs reform. But the proposals contained in this bill are simply too drastic, and the effects on public safety and court congestion could be catastrophic.

We ask you to consider the following points:

- **The current version of SB 10 doesn't specify the statewide agency that will monitor and regulate the 58 new pretrial service agencies.** We suspect that the responsibility to oversee the new system will fall to the Judicial Council's Administrative Office of the Courts — an outfit with a long record of wastefulness and overreach.
- **The bill would heighten the risk to public safety.** Those arrested for selling drugs, committing identity theft, vandalizing homes and businesses, stealing huge sums of money, or burglarizing dozens of businesses would all be presumed entitled to pretrial release — without having to appear before a judge, post bail or submit to any conditions upon release. The bill also inexplicably excludes residential burglary — unauthorized entry into an inhabited residence — from the list of crimes for which arrestees are not to be considered for release without judicial authorization.
- **These proposals would create more congestion in our busiest courts.** Under the proposed legislation, judges in most cases could

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set bail or impose pretrial release conditions such as electronic monitoring only after a hearing. We can expect that prosecutors will be requesting lots of these hearings. Our arraignment courts — already the busiest courts in the entire judicial system — would become completely clogged with bail hearings.

- **The bill completely upends the way in which we handle arrest warrants, to the detriment of the court system and the arrestees themselves.** By eliminating the judge's ability to set a bail amount when issuing a warrant, the proposed legislation virtually ensures that wanted suspects will not be brought to justice in a timely manner, if at all. Moreover, those arrested on warrants could not be released until a judge makes an individualized ruling that considers the arrestee's ability to pay. Arrestees who might otherwise simply post a modest bail and be released from custody will instead languish until their cases can be heard.
- **The bill places an undue — and wholly unrealistic — burden on the prosecution.** The bill would require in some cases that the prosecuting agency be prepared for a contested hearing with live witness testimony in less than 24 hours, at risk of a dangerous felon being set free. The bill also creates a presumption of release pending trial that law enforcement will seldom be able to rebut within the timelines contemplated by the bill, even when the court is faced with a violent criminal facing serious felony charges.
- **The bill injects the concept of the presumption of innocence into a context in which it simply doesn't belong.** The proposed legislation would require judges to consider the presumption of innocence in making pretrial release decisions. This provision makes no sense. While the presumption of innocence is at the heart of our criminal justice system, it's a concept that applies at trial, not in the context of rulings on bail. Both the United States and California Supreme Courts have long maintained that the presumption of innocence "has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun." (Bell v. Wolfish (1979) 441 U.S. 520, 533; see also In re York (1995) 9 Cal.4th 1133, 1148.)
- **SB 10 would "impose a state-mandated local program"— a pretrial services agency — in every county, and saddle that new agency with a nearly impossible task.** The bill would require every county to establish a pretrial services agency and require that new agency to prepare a report, in many cases within six hours of arrest,

and within 12 hours in any event. This provision is simply unworkable. Courts and law enforcement agencies struggle mightily under current law to meet the code's requirement of a probable cause determination within 48 hours of arrest. Police reports are still being completed long after an arrest is made; the prosecuting agency routinely doesn't make a decision to file charges until 48 hours after arrest. Often, they decide not to file charges at all. To require a pretrial services agency to prepare reports for all arrestees within six or 12 hours would result in a huge amount of wasted time, energy and effort. Moreover, the unrealistic and arbitrary time limits will result in sloppy, incomplete and inaccurate reports.

Nearly every county now has a pretrial services division in place to screen defendants and recommend their release on appropriate conditions, without bail, when doing so does not pose a serious danger to the public or a significant risk of non-appearance. A bill mandating a pretrial release program in every county, providing some limited funding for that purpose, and establishing guidelines for their operations would be a sensible response to the problems many face in posting bail. This bill, however, goes way too far.

SB 10 would cause a near shutdown of the court system and it would pose a serious risk to public safety. Since our request that the proposal be significantly amended has gone unanswered, we urge you to withdraw the bill and we will urge your fellow legislators to vote against it.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve White", with a large, stylized flourish at the end.

Hon. Steve White
President

cc: ACJ Board of Directors
Co-Authors of SB 10
State Assembly Appropriations Committee
State Assembly Public Safety Committee