

Staff Memorandum 2026-09
Bail, Pretrial Release, and Related Matters

At its October 2026 meeting, the Committee on Revision of the Penal Code will address bail and other pretrial release issues. The Committee last examined this topic in October 2022. Since then significant judicial developments involving pre-arraignment bail schedules and a court’s use of cash bail have occurred, making the issues ripe for further review.

Table of Contents

Introduction..... 2

Recent Developments.....4

Cash Bail Schedules Before Arraignment.....5

 Setting of cash bail using a bail schedule..... 6

 Alternatives to cash bail before arraignment..... 6

 Using a bail bond company to pay cash bail..... 9

Court Consideration of Pretrial Release and Cash Bail..... 10

 Governing law.....10

 Legal issues following *Kowalczyk*..... 12

 Courts fast-forwarding to cash bail..... 12

 Proving a defendant’s ability to pay..... 13

 Defining “reasonably attainable”..... 13

Court Reminders.....14

Staff Recommendations..... 16

 • End the use of cash bail..... 16

 • Require county bail schedules to include cite and release, book and release, and magistrate review for appropriate offenses.....16

 • Expand judicial discretion in pre-arraignment review of serious and violent offenses..... 16

 • Encourage greater use of sobering centers..... 17

 • Implement *Kowalczyk* with statewide uniformity and consistency.....17

 • Amend Penal Code § 1270.2 so that a 5-day review is meaningful..... 18

 • Statewide court reminders..... 18

Conclusion..... 19

Introduction

Bail is the process of releasing someone from jail with conditions set to provide reasonable assurance of a person's appearance in court and to maximize public safety.¹ But the bail system today is often one of "cash bail" that relies on paying money to the court or — far more frequently — a non-refundable payment to a commercial bail agent to obtain release.² People not released on cash bail may be released on their own recognizance, meaning they promise to come back to court and follow other conditions set by a court. Outright detention before trial is supposed to be a rare occurrence. And though the California Supreme Court recently confirmed that setting an unaffordable cash bail amount is not a permissible way to detain someone, the practice still occurs with frequency.

As the Committee noted when it last addressed cash bail and pretrial release in 2022, studies have repeatedly shown that cash bail does not improve people's law abiding behavior³ or improve the rate at which people return to court.⁴ It may actually cause more harm than good: research shows that pretrial incarceration has adverse effects on public safety.⁵ Staying in jail results in increased pressure to take a plea, greater likelihood of a guilty verdict, harsher sentences, higher rates of new arrests, and the disruption or loss of housing, employment, parental rights, and family support.⁶

A system where cash bail is prevalent does not protect public safety or crime victims because it allows detention to often be determined by wealth, not an

¹ The term "bail" is used differently across the country, in the law, and by history. It is used as both a noun and verb and can be defined variously as money, as a person, a particular form of bond, and the process of release. Timothy R. Schnacke, National Institute of Corrections, *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*, September 2014, 2.

² *Id.* at 38.

³ See e.g., Aurelie Ouss & Megan T. Stevenson, *Does Cash Bail Deter Misconduct?*, American Economic Journal: Applied Economics, vol. 15, no. 3, July 2023 (evaluating data before and after the Philadelphia District Attorney's Office implemented a new bail policy, finding no evidence that financial incentives increased compliance); Michael Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, Pretrial Justice Institute (2013); Tracey Meares & Arthur Rizer, *The "Radical" Notion of the Presumption of Innocence*, The Square One Project, 26–28 (May 2020).

⁴ See *id.*

⁵ See, e.g., Sandra Susan Smith, *Pretrial Detention, Pretrial Release & Public Safety*, Arnold Ventures, July 2022; Christopher Lowenkamp, *The Hidden Costs of Pretrial Detention Revisited*, Core Correctional Solutions, March 2022; Human Rights Watch, *Not in it for Justice: How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, April 2017, 6.

⁶ See, e.g., Megan T. Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, Journal of Law, Economics, and Organization, Sept. 2018, 34(4): 511–542; Will Dobbie, Jacob Goldin, and Crystal S. Yang, *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence From Randomly Assigned Judges*, American Economic Review (2018), 108(2), 203–205.

arrested person's risk of committing new offenses. It also wastes money and other resources: many people are unnecessarily incarcerated who are safe to release but simply cannot afford to pay cash bail.⁷ This system also worsens existing racial disparities in the criminal legal system.⁸

Over the last decade, jurisdictions across the country have either eliminated or reduced reliance on cash bail. A 2024 report from the Brennan Center found there was no statistically significant difference in post-bail-reform crime trends.⁹

But in California, elimination of cash bail was rejected by the voters in 2020. In 2018, Governor Jerry Brown signed SB 10 (Hertzberg), which would have ended the use of cash bail. A voter referendum, Proposition 25, repealed the law in 2020 with 56% of the vote.¹⁰ As a result, the Legislature is prevented from reenacting any policies that are similar to SB 10, although the exact contours of what is permissible are highly uncertain and it may be that eliminating cash bail entirely can only be accomplished with a voter initiative.¹¹

Because the elimination of cash bail through legislation is challenging, this memorandum primarily offers recommendations within the current system for the Committee's consideration. The memo focuses on three specific issues — countywide bail schedules used before an arrested person appears in court for arraignment, the rules a judge should follow when considering cash bail, and the use of court reminders throughout the entire pretrial period to ensure that a person returns to court.

⁷ Schnacke, *Fundamentals of Bail* at 38.

⁸ On average Black and Hispanic people detained pretrial are less likely to be able to post cash bail as a condition of release and often receive cash bail amounts higher than white defendants. See, e.g., Meghan Sacks, Vincenzo A. Sainato & Alissa R. Ackerman, *Sentenced to Pretrial Detention: A Study of Bail Decisions and Outcomes* (2014) 40 Am. J. Crim. Justice 661; Traci Schlesinger, *Racial and Ethnic Disparity in Pretrial Criminal Processing* (2005) 22 Justice Quarterly 170, 187–188.

⁹ Terry-Ann Craigie & Ames Grawert, *Bail Reform and Public Safety: Evidence from 33 Cities*, Brennan Center for Justice, August 15, 2024, 1, 8.

¹⁰ Some reform advocates also argued that SB 10, which proposed a risk assessment tool in lieu of cash bail, could contribute to more racial and socioeconomic inequities. See Amanda Watford, *Cash Bail Policies Are Under Fresh Scrutiny*, Stateline, November 13, 2023.

¹¹ After a successful referendum, a law on the same topic must be “essentially different from the rejected provision and enacted not in bad faith, and not with intent to evade the effect of the referendum petition.” *Assembly v. Deukmejian*, 30 Cal.3d 638, 678 (1982) (cleaned up). As there have only been a handful of successful statewide referenda in the last 40 years, the limits of this doctrine are difficult to map.

Recent Developments

Since the Committee last considered these issues in 2022, more courts have considered and found several aspects of California's cash bail system unfair and unconstitutional.

- Courts in Los Angeles and Riverside counties (joining courts in Sacramento and San Francisco) have found pre-arraignment bail schedules unconstitutional when they are applied before arraignment because they fail to consider a person's ability to pay bail.¹²
- Nine bail bonds underwriters agreed to settle a class action anti-trust lawsuit for \$66 million alleging they engaged in price-fixing when setting a near-universal required bail premium of 10%.¹³
- The California Supreme Court unanimously held in *In re Kowalczyk* that judges cannot use unaffordable bail as a substitute for detention. This decision built on the Court's 2021 *Humphrey* decision which held that detaining people solely on their ability to afford cash bail was unconstitutional.¹⁴ According to Justice Groban in a concurring opinion, *Kowalczyk* "marks the end" in California of detaining people in jail by setting unaffordable cash bail.¹⁵

¹² See *Sandoval et al. v. Riverside County et al.*, Superior Court of California, County of Riverside, Case No. CVR12502556, Preliminary Injunction, February 6, 2026; *Urquidi et al., v. City of Los Angeles*, Superior Court of California, County of Los Angeles, Case No. 22STCP04044, Memorandum Decision and Order on Motion for Preliminary Injunction, May 16, 2023.

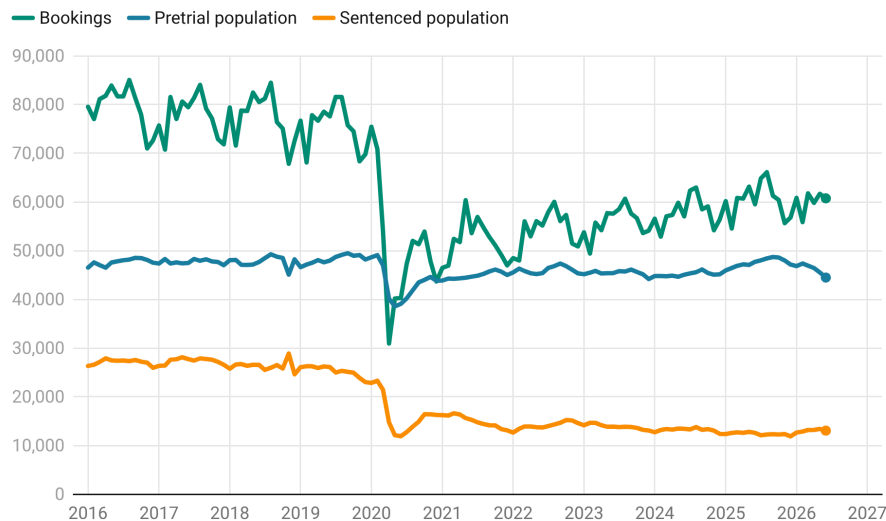
¹³ Daniel Schrager, *Bail Bond Insurers Agree to \$66 Million Antitrust Settlement*, Daily Journal, June 29, 2026.

¹⁴ *In re Humphrey*, 11 Cal.5th 135, 143 (2021).

¹⁵ *In re Kowalczyk*, 19 Cal.5th 593, 637 (2026) (Groban, J., concurring).

Even as these developments have occurred, around 60,000 people are booked into California's jails each month and the pretrial jail population is around 46,000 people, accounting for more than 70% of the people held in jail.

California jail population and bookings, 2016–2026



Data is through June 2026. Bookings are monthly bookings. Populations are average daily populations.

Chart: Committee on Revision of the Penal Code • Source: BSCC, Jail Profile Survey • Created with Datawrapper

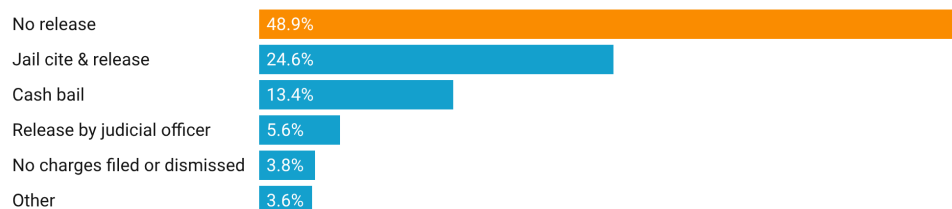
Cash Bail Schedules Before Arraignment

Whether someone may be released or held before they first appear in front of a judicial officer for arraignment arises the moment someone is arrested. A person may be cited and released; booked and released (where they are arrested, fingerprinted, brought to the jail and then released from the jail); held without any amount of bail; or held under a specific amount of cash bail based on a predetermined schedule.

Data from the Judicial Council shows that about half of people arrested in California obtain release before arraignment, with about 13% paying cash bail:

Results within two days of new offense bookings, July 2024–June 2025

The number of total new offense bookings is 521,564.



Los Angeles County is not included in this data. "Release by judicial officer" includes recognizance release with or without conditions. "Other" includes transfer to other agency, time served, transfer to CDCR, and other types of releases.

Chart: Committee on Revision of the Penal Code • Source: Judicial Council of California, Report to the Legislature: Pretrial Services Program Year 4, 2026, pages 9–11 • Created with Datawrapper

Setting of cash bail using a bail schedule

The Penal Code provides presumptive citation and release for many misdemeanor offenses, allowing law enforcement to release the arrested person without booking them into jail as long as they sign a citation promising to appear in court on a specified date.¹⁶ There are numerous exceptions to this policy, including for domestic violence offenses and various safety-related circumstances.¹⁷ Felony offenses are excluded from the Penal Code's cite and release provisions.¹⁸

If citation and release is not available, anyone — regardless of their public safety risk or history of returning to court — charged with a bail-eligible offense can pay to be released from jail by posting the amount authorized in the county bail schedule, which is determined each year by the judges of the county Superior Court.¹⁹

The practice is both overinclusive — because many people are confined who may not pose any risk simply because they cannot afford to post the amount on the bail schedule — and underinclusive — because others who might pose a greater risk to public safety may be released simply because they can afford to pay a high bail amount.²⁰ A cash bail schedule also fails to account for an arrested person's ability to pay the cash bail amount. Even a very low cash bail amount on a schedule may be impossible for a person with little money to pay.

Each of California's 58 superior courts develops its own bail schedule, except for infractions and misdemeanors in the Traffic Code, which follow a statewide schedule set by the Judicial Council.²¹ As a result, bail schedule amounts vary widely from county to county.²²

Alternatives to cash bail before arraignment

Two federal district courts²³ (in San Francisco and Sacramento counties) and two state courts²⁴ (in Los Angeles and Riverside counties) have found that the use of pre-arraignment bail schedules are unconstitutional before arraignment.

¹⁶ Penal Code § 853.6.

¹⁷ Penal Code § 853.6(i).

¹⁸ Penal Code § 853.85.

¹⁹ Penal Code § 1269b(b).

²⁰ See *Welchen v. Bonta*, 630 F. Supp. 3d 1290, 1301 (E.D. Cal. 2022).

²¹ Penal Code § 1269b(c); Vehicle Code § 40310.

²² Pretrial Detention Reform Workgroup, *Pretrial Detention Reform: Recommendations to the Chief Justice*, 29, October 2017.

²³ *Buffin v. City and County of San Francisco*, Northern District of California, Case No. 15-cv-04959; *Welchen v. Bonta*, Eastern District of California, Case No. 16-cv-00185.

²⁴ *Sandoval et al. v. Riverside County et al.*, Superior Court of California, County of Riverside, Case No. CVR12502556, Preliminary Injunction, February 6, 2026; *Urquidi et al., v. City of Los Angeles*, Superior Court of California, County of Los Angeles, Case No. 22STCP04044, Memorandum Decision and Order on Motion for Preliminary Injunction, May 16, 2023.

Because these counties are prohibited from using their pre-arraignment bail schedule, the respective counties — San Francisco, Sacramento, Los Angeles, and Riverside — have implemented significant changes in how cash bail can be used pre-arraignment.

The Penal Code limits the scope of some of these pre-arraignment changes. California law prohibits pre-arraignment release in any manner other than the amount listed in the bail schedule or release on their own recognizance for people charged with a serious or violent offense until a hearing happens in open court, typically at arraignment.²⁵ The exclusion also applies to a few other offenses such as domestic violence and violating a restraining order.²⁶ In addition, a person arrested for either of the two new offenses created by Proposition 36 must be reviewed by a judicial officer before they are released.²⁷

San Francisco County

In San Francisco, the parties agreed to an injunction that not only prevented use of the bail schedule, but modified pre-arraignment procedures. As a result, courts must make a bail determination within 18 hours for people arrested for nonviolent/nonserious offenses or the arrested person is released.²⁸

Sacramento County

In Sacramento County, the court ordered the sheriff to stop using the pre-arraignment bail schedule unless there was an “individualized determination as to the arrestee’s ability to pay, risk of nonappearance, or threat of public safety before trial.”²⁹ In response, together with various stakeholders, a new pre-arraignment review process was implemented in December 2023. A magistrate completes a review of a person’s public safety risk, based on an assessment by probation, and the person’s ability to pay within 18 hours of booking.³⁰ A magistrate may order a person released on their own recognizance, with pretrial conditions, or defer to the arraignment judges. From November 2024 to November 2025 a magistrate released an average of 175 people each month to pretrial monitoring.³¹

²⁵ Penal Code §§ 1270.1(a)(1); 1319(a).

²⁶ The statute also prohibits release other than the bail schedule for anyone charged with intimidating a witness, domestic violence, stalking, criminal threats, and violating a restraining order. Penal Code § 1270.1(a)(2)-(4).

²⁷ Health and Safety Code § 11395(f); Penal Code § 666.1(c).

²⁸ *Buffin v. City and County of San Francisco*, Northern District of California, Case No. 15-cv-04959. The court’s order granting summary judgment issued March 4, 2019, and the order on remedy issued September 3, 2019.

²⁹ *Welchen v. Bonta*, Eastern District of California, Case No. 16-cv-00185, Order, September 5, 2023.

³⁰ Sacramento County, County Executive Office, *Jail Population Reduction Plans Status Report (July – December 2025)*, 21.

³¹ *Id.* at 22.

Los Angeles County

In Los Angeles County, after a court prohibited the county from requiring cash bail for release before arraignment, the Superior Court adopted a new bail schedule that sets forth a series of pre-arraignment release protocols (PARP).

Depending on the alleged offense, PARP directs an arresting officer to either (1) release the person after fingerprinting (“book and release”) or without fingerprinting (“cite and release”); (2) fingerprint the person and hold them for magistrate review; or (3) set cash bail in the amount of the bail schedule without judicial review.³² Law enforcement may also request to increase bail amounts or to elevate the level of release, e.g. book and release to magistrate review, for any offense.³³

When held for magistrate review, a judicial officer reviews a person’s prior criminal history, failures to appear in court, the facts of the present offense, and other information provided by law enforcement to determine the person’s risk to public safety and likelihood of returning to court. Judges make these decisions at all hours, not just during business hours. Data from October 1, 2023, to June 17, 2026, show that about half (47%) of PARP bookings did not merit magistrate review and the other half (48%) were reviewed by a magistrate.³⁴ Of bookings reviewed by a magistrate, 94% were held until arraignment.

A study of the first two months following implementation of PARP by the California Policy Lab found that both the average daily (by 2.4%) and pretrial (by 3.2%) county jail populations decreased with no effect on crime in the City of Los Angeles.³⁵

Riverside County

Following the filing of a lawsuit in May 2025, Riverside County adopted a new bail schedule in October 2025, allowing for book and release and cite and release, which do not require setting of any cash bail, for a small number of offenses.³⁶ In February 2026, the Superior Court overseeing the lawsuit imposed a preliminary injunction, which prohibited the county from setting cash bail for an additional 19 non-violent offenses, even though they are subject to cash bail on the county bail schedule.³⁷ While the revised bail schedule provides for

³² Superior Court of California, County of Los Angeles, *2026 Felony Bail Schedule*, January 1, 2026.

³³ *Id.*

³⁴ Los Angeles County Superior Court, Pre-Arraignment Release Protocol (PARP) Dashboard.

³⁵ Thomas Sloan, et al., *The Short-Term Impacts of Bail Policy on Crime in Los Angeles*, California Policy Lab, August 2024.

³⁶ Superior Court of California County of Riverside, *2025 Misdemeanor and Felony Bail Schedule*, October 20, 2025, 2.

³⁷ *Sandoval et al. v. Riverside County et al.*, Superior Court of California, County of Riverside, Case No. CVR12502556, Preliminary Injunction, February 6, 2026.

pre-arraignment review for certain offenses, the county has apparently not yet implemented any program or system to provide this review.³⁸

Other Counties

Though not the result of direct litigation, several other counties have recently adopted PARP-like or other presumptive release systems. Contra Costa, San Joaquin, and Kern Counties have adopted their own Pre-Arraignment Release Protocols in the last 18 months.³⁹ Other counties have simply designated certain offenses as cite and release, unless law enforcement requests a higher bail, such as Santa Cruz County, while others have set certain bail amounts at \$0, including Fresno County (misdemeanors and several felonies) and San Bernardino and San Luis Obispo Counties (misdemeanors only).⁴⁰

Other counties have instead relied on pre-arraignment risk assessments to allow for a non-cash bail option for release pre-arraignment. According to the Judicial Council, 22 courts have adopted procedures that permit pre-arraignment decisionmaking and release by courts.⁴¹ Many of these courts have automated the submission of risk assessment reports to the court, allowing decision-making outside of regular business hours.⁴²

Using a bail bond company to pay cash bail

In counties that continue to utilize cash bail pre-arraignment, people primarily use a commercial bail bond to secure release from custody.⁴³ A bail agent charges a nonrefundable fee (bail premium), historically 10% of the value of the bond, and the bail agent assumes risk of forfeiture of the bond to the court.

The 10% premium amount is not set by law. Recently, nine bail bond underwriters operating in California agreed to settle a class action lawsuit over allegations that they had conspired to fix this price by creating a false impression that refunds or lower percentages were not allowed.⁴⁴ As part of the

³⁸ Superior Court of California, County of Riverside, *2025 Misdemeanor and Felony Bail Schedule*, October 20, 2025, 2.

³⁹ Superior Court of California, *Bail Schedules: Contra Costa County*, July 8, 2026; *San Joaquin County, Tentative*, July 23, 2026; *Kern County*, December 19, 2025.

⁴⁰ See Superior Court of California, *Bail Schedules: Santa Cruz County*, December 10, 2025; *Fresno County, 2026 Criminal Bail Schedules*; *San Bernardino County*, June 4, 2026; *San Luis Obispo County*, October 10, 2025.

⁴¹ Judicial Council of California, *Report to the Legislature: Pretrial Services Program Year 4, 2026*, April 24, 2026, 6.

⁴² *Id.*

⁴³ Pretrial Detention Reform Workgroup at 29. Data provided to the Workgroup by three courts showed that, over a one-year term, full cash bail was only posted in less than 2% of total cases. *Id.* at 31.

⁴⁴ Daniel Schrager, *Bail Bond Insurers Agree to \$66 Million Antitrust Settlement*, *Daily Journal*, June 29, 2026.

settlement, underwriters must inform bond agents that fees are negotiable and they must make a similar disclosure to people shopping for a bail bond.

Release to a sobering center

Sobering centers also offer an alternative to cash bail by releasing intoxicated adults to short-term supervised care. A sobering center typically operates 24 hours a day, 7 days a week, allowing people to stay for several hours while they recover from the effects of alcohol or drugs. While the concept has existed for decades, new state Medi-Cal rules allowing for reimbursement have brought renewed attention.⁴⁵

Studies have estimated that a law enforcement officer can drop someone off at a center in a few minutes compared to booking a person into jail that may take 45 minutes to several hours.⁴⁶ A sobering center in Santa Cruz is adjacent to the county jail, making it convenient for officers to re-route an estimated 200 people per month from jail, including for public intoxication and DUI offenses.⁴⁷ Facilities are under construction in Madera County and Riverside County.⁴⁸

Court Consideration of Pretrial Release and Cash Bail

If an arrested person has not obtained release before their first court appearance, the court will address pretrial release at the appearance. The law controlling a court's consideration of cash bail and other pretrial issues is a complex interplay of constitutional provisions and sections of the Penal Code that often conflict or do not fully incorporate the constitutional requirements, including rigid statutory mandates that ostensibly make departing from the cash bail schedule challenging in a wide array of cases. The Penal Code sections governing pretrial release determinations have not been revised since the *Humphrey* and *Kowalczyk* decisions.

Governing law

If a person has not been released from jail, the first court appearance — typically an arraignment — must occur “without unnecessary delay” but no more than 48 hours after arrest, excluding Sundays and holidays.⁴⁹

⁴⁵ California Department of Health Care Services, *CalAIM – Medi-Cal Community Supports Supplemental Fact Sheet*, October 2025.

⁴⁶ California Health Care Foundation, *Sobering Centers Explained: An Innovative Solution for Care of Acute Intoxication*, July 2021, 2.

⁴⁷ J. Duncan Moore Jr., Shmuel Thaler, *Santa Cruz Sobering Center Benefits Patients and County Justice System*, California Health Care Foundation, November 20, 2024.

⁴⁸ Dania Romero, *Madera County Breaks Ground on New Crisis Stabilization and Sobering Center*, Fox26News, March 29, 2026; Department of Health Care Services, *News Release: California Celebrates the Groundbreaking of Riverside Behavioral Health Wellness Village*.

⁴⁹ Penal Code § 825(a)(1). In its 2022 Annual Report, the Committee recommended removing the exceptions for Sundays and holidays.

The California Supreme Court has repeatedly held that the starting point for pretrial releases decisions is that “liberty is the norm.”⁵⁰ For misdemeanor offenses, there is a statutory presumption at arraignment of release on one’s own recognizance, which can include appropriate conditions.⁵¹ Similarly, for felony cases, a court can condition release on appropriate conditions.⁵²

The California Supreme Court has specified that a court may only consider imposing cash bail if it concludes there is clear and convincing evidence that no other non-financial condition will protect public safety and ensure the defendant’s return to court.⁵³ In other words, cash bail should not be the first issue that a court considers and should not even be a consideration in many cases.

If a court does conclude there is sufficient evidence that cash bail is necessary, it must, according to the California Supreme Court’s *Kowalczyk* decision, set bail at an amount “reasonably attainable for the defendant” based on an “individualized assessment of the totality of the circumstances.”⁵⁴ Those circumstances include public safety, seriousness of the charged offense, a person’s prior criminal record and history of complying with court orders.⁵⁵ California’s constitution additionally specifies that “Public safety and the safety of the victim shall be the primary considerations.”⁵⁶

Ultimately, according to the California Supreme Court, the cash bail amount “need not be easily affordable or convenient to the defendant ... [but must be] an amount that is consistent with, and designed to effectuate, a defendant’s general right to pretrial release.”⁵⁷

Despite this need for individual determinations of affordable cash bail amounts, for serious or violent offenses the Penal Code requires a court to find “unusual circumstances” before imposing cash bail less than the amount in the bail schedule.⁵⁸

⁵⁰ *Kowalczyk*, 19 Cal.5th at 630 (cleaned up).

⁵¹ Penal Code § 1270(a); Penal Code § 1318; *In re York*, 9 Cal.4th 1133 (1995).

⁵² Penal Code § 1270(a).

⁵³ *Kowalczyk*, 19 Cal.5th at 629.

⁵⁴ *Id.* at 607–8.

⁵⁵ *Id.* at 607.

⁵⁶ Cal. Const., art. 1, § 28(f)(3). See also Penal Code § 1275(a)(1). Consideration of “seriousness of the offense charged” is additionally supposed to encompass “the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant.” Penal Code § 1275(a)(2). See also Penal Code § 1270.1(c) (additional considerations for deviating from the bail schedule or recognizance release for certain offenses).

⁵⁷ *Kowalczyk*, 19 Cal.5th at 631.

⁵⁸ Penal Code § 1275(c).

The state constitution also allows courts to order “no bail,” or pretrial detention, only in the limited circumstances listed in article 1, section 12. This constitutional provision limits detention to capital cases, felony cases involving acts of violence on another person, felony sexual assault offenses on another person, or felony cases where there is a threat of great bodily harm where a court makes required finding by “clear and convincing evidence” of a “substantial likelihood” of certain harms.⁵⁹ No misdemeanor offense is eligible for detention.⁶⁰ The California Supreme Court recently confirmed in *Kowalczyk* that “courts cannot use artificially high or objectively unattainable bail as an end run to effectuate pretrial detention where such detention is not authorized under section 12.”⁶¹

The Penal Code provides for reviews of bail determinations within five days of the initial decision⁶² and the decision can be revisited later in the case — including by another judge — for “good cause.”⁶³ Immediate appellate review of bail decisions are also available via habeas corpus petitions.⁶⁴

Legal issues following *Kowalczyk*

The California Supreme Court’s most recent decision on bail and pretrial matters, *In re Kowalczyk*, issued in April 2026. Several issues were explicitly left open by the Court or have developed following the Court’s decision.

Courts fast-forwarding to cash bail

Despite guidance from the Court that cash bail should only be considered if a judge concludes that other conditions are insufficient, many judges first consider cash bail before establishing that nonfinancial conditions of release could assure a person’s return to court and public safety.

Some appellate courts have quickly granted habeas corpus petitions, sending cases back to the trial court to first consider whether nonfinancial conditions were sufficient to vindicate the state’s interests and then whether that was proven by clear and convincing evidence before addressing money bail.⁶⁵ For example, one appellate court found \$100 bail on a misdemeanor charge might not be reasonably attainable for an indigent unhoused person.⁶⁶

⁵⁹ *Kowalczyk*, 19 Cal.5th at 626.

⁶⁰ *Id.*

⁶¹ *Id.* at 625.

⁶² Penal Code § 1270.2.

⁶³ Penal Code § 1289. See also *In re Alberto*, 102 Cal.App.4th 421, 430 (2002).

⁶⁴ Penal Code § 1490; *In re Harris*, 16 Cal.5th 292, 329 (2024).

⁶⁵ See, e.g., *In re Gutierrez Robles*, A176674, June 5, 2026 (1st Dist.); *In re Sherman*, A176495, May 21, 2026 (1st Dist.).

⁶⁶ *In re Nforkemba*, A176476, June 2, 2026 (1st Dist.).

Appellate habeas corpus proceedings, however, are a poor vehicle for providing speedy remedies. And, according to practitioners, some appellate districts do not reach the merits of a habeas petition challenging a bail determination until after the case is resolved or a person is otherwise released from custody. And though a defendant is entitled to an automatic review of a bail decision within 5 days,⁶⁷ practitioners report that the court appearance is often waived and review rarely results in an adjusted cash bail amount.

Proving a defendant's ability to pay

The California Supreme Court did not specify particular information or the manner of proof to establish how much money a defendant may have available for cash bail. A footnote in *Kowalczyk* explained that placing the burden on the defendant is consistent with the law in other contexts, but that courts are not compelled to accept “unsupported, conclusory assertions of indigency or an inability to pay.”⁶⁸

However, in another case arising in the bail context, the California Supreme Court has held that informal proffers at bail hearings are acceptable as long as there is no indication of unreliability.⁶⁹ Practitioners have reported to staff that some trial courts reject proffers from defense counsel while others accept them.

Defining “reasonably attainable”

Kowalczyk specified that cash bail must be “reasonably attainable” but not necessarily “easily affordable or convenient.”⁷⁰ The Court did not further specify how to make this determination. As a result, some courts consider whether a person’s family or friends can help pay bail or whether a person can pay a 10% of the entire bail amount to a bail bonds company in lieu of the entire bail amount.

California law and practice in other contexts provides helpful models to address these issues. For example, when someone is arrested for a probation violation, Penal Code section 1203.25 provides — that if cash bail is appropriate under the statute — the court “shall consider the person’s ability to pay cash bail, not a bail bond or property bond. Bail shall be set at a level the person can reasonably afford.”⁷¹

California has also developed a statewide system — MyCitations — that allows for ability-to-pay determinations for paying the fines associated with traffic and other infractions.⁷² MyCitations allows defendants to provide relevant financial

⁶⁷ Penal Code § 1270.2.

⁶⁸ *Kowalczyk*, 19 Cal.5th at 607, 630 n.25.

⁶⁹ See *In re Harris*, 16 Cal.5th 292, 311–14 (2024) (noting the “conventional practices at bail hearings, which commonly involve informal proffers by the prosecution and defense alike”).

⁷⁰ *Kowalczyk*, 19 Cal.5th at 631.

⁷¹ See Penal Code § 1203.25(c)(2).

⁷² The Committee received a presentation about MyCitations at its June 2023 meeting.

information so the court can consider reducing fines and fees owed on infraction cases. The tool asks about income, benefits, household size, and expenses, and courts can also manage their own settings to adjust for cost-of-living and other local data. Courts have used their programs to recommend a range of 50–90% reduction for defendants on public benefits and a sliding scale indexed to the federal poverty level.⁷³ Similarly, a presumption applies for an inability to pay court fees and costs for people who receive public benefits under several state and federal assistance programs.⁷⁴

Court Reminders

People often miss court dates for innocuous reasons or reasons beyond their control — such as problems with getting time off of work, finding childcare, securing transportation, or simply forgetting — that are unrelated to criminal behavior or a desire to flee prosecution.⁷⁵

Court reminders — similar to those people receive from a dentist’s office or medical provider — address these issues by helping people remember their court date, understand the consequences of missing court, and reduce confusion about where to go.⁷⁶ Research has shown that reminders are effective at increasing return to court. For example, one study in Santa Clara County found that reminders sent by text reduced warrants issued for missed court dates by almost 20%.⁷⁷ Even mailed reminders can boost appearance — in Sacramento County mailed reminders reduced nonappearance by 16%.⁷⁸

Increasing appearance in court and reducing the rate of warrants benefits both individuals and courts. Individuals avoid consequences of warrants such as pretrial incarceration. And less warrants reduce administrative burdens and costs on courts and jails.

⁷³ *Online Infraction Adjudication and Ability-to-Pay Determinations*, Report to the Legislature, Judicial Council of California, February 2025, 15.

⁷⁴ See Government Code § 68632(a).

⁷⁵ Nazish Dholakia, *Millions of People in the U.S. Miss Their Court Date, With Dire Consequences*, Vera Institute of Justice, February 13, 2024.

⁷⁶ Alissa Fishbane, Shannon McAuliffe, and Yipling Li, *Improving Court Attendance: The Essential Guide to Court Reminders*, ideas42, May 2025; Joanna Thomas & Abdaziz Ahmed, New York City Criminal Justice Agency, *Court Date Notifications: A Summary of the Research and Best Practices for Building Effective Reminder Systems*, March 2021, 29–30.

⁷⁷ Alex Chohlas-Wood et al., *Automated Reminders Reduce Incarceration for Missed Court Dates: Evidence From a Text Message Experiment*, *Science Advances* 11(40), October 1, 2025,

⁷⁸ ideas42, *Stamping Out Missed Court Dates: How Mailed Reminders Boost Appearance*, Aug. 2024, 5.

Court reminders have broad bipartisan support with more than 7 in 10 adults in support of the practice.⁷⁹ They are a low-cost intervention — a mailed reminder costs \$0.71 and a text reminder costs less.⁸⁰

In response to a nationwide survey by Pew Charitable Trusts in 2024, 18 states reported they had statewide court date reminder programs.⁸¹ For example, the Texas Court Reminder Program is available to every county in the state for no charge.⁸²

States with opt-in programs had substantially lower participation rates than states that automatically enrolled participants. For example, in 2019, the Colorado legislature unanimously passed a bill to create a statewide court text reminder program, but the program only had a usage rate of 20% because the program required defendants to opt-in for reminders.⁸³ In 2022, the legislature amended the law to enroll defendants automatically while allowing them to opt out, and participation increased dramatically: reminders rose from about 56,000 to 224,000 in one month and more than 99% were delivered without a request to opt out.⁸⁴

No universal notification system exists statewide in California.⁸⁵ Instead, according to the Judicial Council, notifications are primarily sent by probation departments providing pretrial services.

Reaching people before their first appearance in court is crucial because it's the first time a person can show the court they will return as promised if they were released before arraignment. But providing reminders in this context is challenging. Police officers often do not collect contact information and courts often do not have a docket number to attach the reminder to. Adjusting how this information is collected can make a difference. According to the then-Criminal Courts Administrator, in Tarrant County (Fort Worth), Texas, the warrant

⁷⁹ Pew Charitable Trusts, *Court Reminders Have Broad Bipartisan Support*, November 25, 2025.

⁸⁰ ideas42, *Stamping Out Missed Court Dates*, at 8.

⁸¹ Pew Charitable Trusts, *States Underuse Court Date Reminders*, May 12, 2025.

⁸² Texas Gov't Code § 75.601.

⁸³ Colorado Legislature, Legislative Council Staff, Final Fiscal Note: SB 22-018, June 24, 2022.

⁸⁴ SB 22-018 (Colo. 2022); Alissa Fishbane, Shannon McAuliffe, and Yipling Li, *Improving Court Attendance: The Essential Guide to Court Reminders*, ideas42, May 2025, 6–7

⁸⁵ A bill introduced in 2023, SB 255 (Umberg), would have required the Judicial Council to make available a court reminder program and required law enforcement agencies to collect cell phone numbers of defendants upon booking or citation. At the time, the Judicial Council estimated one-time and ongoing costs ranging from \$3.2 million to \$4.5 million in the first three years of operation and \$1.2 million annually thereafter to make the adequate information technology investments and address staff resources. SB 244, Senate Committee on Appropriations analysis, April 21, 2023.

issuance rate dropped from 9% to 2.6% over 8 years after embedding court staff during the jail intake process to collect accurate contact information.⁸⁶

The content of the communication also matters. Tickets and letters sent from courts and law enforcement can be confusing and bury important information, such as where and when a person is required to show up. A simple redesign of a summons form in New York City that put court information at the top of the ticket and certain text in bold reduced failures to appear by 13%.⁸⁷

Staff Recommendations

The Committee may wish to consider the following recommendations to address the issues raised in this memorandum.

- **End the use of cash bail.**

In 2022, the Committee did not recommend ending cash bail because the process for enacting such change is uncertain. But the experience in California in the years since *Humphrey* has shown that the cash bail system presents persistent issues with workability, equity, and fairness. Cash bail should be eliminated in California.

Because ending cash bail is unlikely to occur soon, the following recommendations largely address issues with the existing system:

- **Require county bail schedules to include cite and release, book and release, and magistrate review for appropriate offenses.**

Some counties across the state have adopted bail schedules that mandate cite and release or book and release for low-level offenses and magistrate review for many other offenses, including at law enforcement's request. The Penal Code should require every county bail schedule to take this approach.

- **Expand judicial discretion in pre-arraignment review of serious and violent offenses.**

Current law prohibits a person arrested for a serious or violent offense from being released on their own recognizance until a hearing occurs in open court. Courts should be given greater discretion to determine if people arrested for some of these offenses — such as *Estes* robberies⁸⁸ — are appropriate for pre-arraignment release with conditions. While the decision should still be made by a judicial officer, it should not need to

⁸⁶ Greg Shugart, *We Did Something Simple. It Worked. And Now I Know Why*, eCourtDate Blog, June 5, 2026.

⁸⁷ Alissa Fishbane, Aurelie Ouss, and Anuj K. Shah, *Behavioral Nudges Reduce Failure to Appear for Court*, *Science* 370, November 6, 2020.

⁸⁸ *People v. Estes*, 147 Cal.App.3d 23 (1983).

require a hearing, which would allow greater judicial discretion while protecting public safety.

- **Encourage greater use of sobering centers.**

Sobering centers — where someone arrested for public intoxication or DUI can receive short-term supervised care — offer an alternative to pretrial detention. Law enforcement could be required to use an available sobering center when someone is arrested for public drunkenness and a first-offense DUI.

- **Implement *Kowalczyk* with statewide uniformity and consistency.**

In 2022 the Committee recommended codifying and clarifying elements of the Court’s decision in *Humphrey*, including a presumption of release, when conditions of release should be imposed, and how courts should determine affordable cash bail.⁸⁹

In addition to restating the Committee’s previous recommendations, the additional framework below could guide trial courts in their decision-making.

- As explained in *Humphrey* and *Kowalczyk*, cash bail should be set as a last resort and only when a judicial officer has found by clear and convincing evidence that no combination of nonfinancial conditions can protect public safety and help ensure return to court.
- In determining what amount of cash bail is reasonably attainable, a trial court should only consider an individual person’s ability to pay the entirety of the cash bail amount, not the amount of a potential bail bond premium. The court should also only evaluate an individual’s ability, not what any family member or other associate may be able to pay. A similar framework is already required in Penal Code § 1203.25(c)(2) when a court sets bail on a probation violation.
- Because bail hearings occur at the earliest stage of criminal representation when attorneys have often had little time to confer with their clients, courts should not require sworn statements to prove ability to pay.⁹⁰ The trial court should instead rely on a

⁸⁹ Committee on Revision of the Penal Code, 2022 Annual Report and Recommendations, December 2022, 64.

⁹⁰ The Committee previously recommended reliance on sworn statements in this context. Committee on Revision of the Penal Code, 2022 Annual Report and Recommendations, December 2022, 68. But staff — after hearing the experience of numerous practitioners — now recommends that sworn statements not be required.

proffer from the defendant or their counsel as long as there is no reason to doubt the reliability of the information — a standard the California Supreme Court has approved for prosecutors proffering information to justify pretrial detention.⁹¹

- As in other areas of California law and practice, a presumption of an inability to pay any amount of cash bail should apply if a person is receiving certain needs-based public benefits, such as CalFresh, Medi-Cal, or SSI, or is currently unhoused, as defined by the federal department of Housing and Urban Development.⁹²
- If no presumption applies, the trial court should determine a person's ability to pay based on their disposable income. In 2022, the Committee recommended that reasonably attainable bail could be set at a large percentage — such as 50% — of the person's disposable income.
- **Amend Penal Code § 1270.2 so that a 5-day review is meaningful.**
Under current law, a person is entitled to automatic review of a bail determination within 5 days, but these reviews often do not occur. If a person remains incarcerated on cash bail 5 days after the initial bail determination, cash bail was likely set at an amount they could not afford. Amending this statute to require a court to consider the fact that the person has been unable to pay the cash bail previously set would make the 5-day review meaningful.
- **Statewide court reminders.**
Court reminders are an effective and inexpensive tool to get people to return to court. Each county court should employ a court reminder program that sends text messages to all defendants in criminal cases notifying them of scheduled court appearances, including arraignment. The reminders should follow evidence-based best practices, including plain language for the date, time, and court of appearance; consequences for nonappearance; multiple reminders, and a message within one day after any missed appearance with information about how to resolve it.

⁹¹ *In re Harris*, 16 Cal.5th 292, 311-314 (2024). See also *Hood v. Superior Ct.*, 72 Cal.App. 4th 446, 449-50 (1999) (there is “no reason for the trial court to refuse to accept a lawyer’s unsworn representation of financial hardship ...unless there is something to make the court question the accuracy of counsel’s representations.”).

⁹² U.S. Department of Housing and Urban Development, HUD Exchange. See also Shanelle Johnson, *First Steps Toward More Equitable Fines and Fees Practices*, Fines & Fees Justice Center, September 2024, 4-5.

Conclusion

Despite sustained attention from the California Supreme Court and other courts in California, cash bail continues to be used in ways that undermine public safety and lead to inequitable results. The Committee should consider recommendations that would address these problems.

Respectfully submitted,

Thomas M. Nosewicz
Legal Director

Joy F. Haviland
Senior Staff Counsel