

Preserving the Presumption of Innocence: A New Model for Pretrial Reform

Recognizing that pretrial incarceration unfairly punishes people who have not been convicted of a crime, discriminates against poor people and people of color, undermines the integrity of our legal system by pressuring guilty pleas, and costs taxpayers, we propose policy to reform the pre-trial system that does the following:

- Mandates release, with citation, at the point of arrest for all misdemeanor and felony arrests that are not “serious or violent,” and have not resulted in actual physical harm or threat of physical harm to some person.
- Restricts detention only to those who are accused of violent felonies (statutorily defined “serious” and “violent” felonies in California), that include allegations of actual physical harm or threat of physical harm, and who pose a specific and provable threat of harm to others or danger of fleeing to avoid prosecution, again with limited exceptions.
- Requires courts to conduct rigorous hearings with strict due process protections before ordering detention or restrictive release conditions.
- Forbids the use of profile-based or algorithm based risk assessment tools or any statistical evidence to show risk.
- Requires the county to bear costs if the court orders some restrictive conditions of release.
- Re-invests money saved from reduced incarceration into community development and community-based services that will improve safety without law enforcement.

This new system draws from existing law, from Article 1, Section 12 of the CA Constitution, from some provisions of the original version SB 10, and the New York pretrial reform law.

Cite and Release for most people accused but not convicted:

- All people arrested for misdemeanors, low-level felonies and high-level felonies that do not allege actual physical harm or threat of such harm sign promises to appear in court instead of facing booking in jail.
- Limited exceptions would include domestic violence, stalking, child abuse, restraining order violations, which would require rapid hearings to formulate individualized safety plans that account for individual, family and community needs.
- The majority of people will not be jailed at all, unless convicted and sentenced to jail, thus saving taxpayers money, reducing risk of exposure to ICE for undocumented people, removing pretrial incarceration as coercion to plead guilty, ending the harmful effects of jailing presumptively innocent people.

Due Process Hearing for those Eligible for Pretrial Incarceration:

- People accused of “serious” or “violent” crimes that involved actual or threatened physical harm, may be eligible for pretrial incarceration, as set forth in California Constitution, Article 1, Section 12, following a procedurally appropriate hearing.
- Due process requires the following: right to individualized notice of intent to seek incarceration, right to discovery of all evidence, right to a speedy hearing, right to a probable cause hearing, right to cross-examine adverse witnesses, right to present witnesses, right to remain silent, right to immediate appointment of counsel, right to a presumption of release, right to an individualized record of reasons for the decision, right to rapid review of detention decisions.
- Judges must order release if prosecutors seeking detention do not prove, with actual evidence and not through statistical likelihoods, that the accused is a threat to a specific person or people or a risk of fleeing to avoid prosecution.

Building a fair and supportive system:

- Fund public defense pretrial units to improve overall representation of accused people.
- Establish independent, non-law enforcement pre-trial agencies that help remove barriers to court appearance and access to services.
- Establish data collection requirements to allow public and government to evaluate the outcomes of the pretrial system.
- Re-invest savings from reduced pretrial incarceration into community development and community-based services.
- Pre-trial reform must be part of a comprehensive vision to reduce incarceration and to invest in our communities and our people.