



# **CALIFORNIA BAIL REFORM**

**MICA DOCTOROFF**

**ACLU OF CALIFORNIA CENTER FOR ADVOCACY AND POLICY**



# BAIL 101

Historical Purpose

- Getting people to return to court

Today's Purpose

- Return to court
- Public safety

Bail process in CA

- Arrest
- Booking
- Bail schedule
- Arraignment

Nonfinancial  
Release

- Own recognizance
- Own recognizance with additional conditions

Money Bail

- Pay full amount and get it back if you show up to court
- Pay a (10%) non-refundable fee for a commercial bail bond

# WHY BAIL REFORM?

Economic Disparity

Racial Disparity

Poor Outcomes for Defendants

Poor Public Policy

Constitutional Law



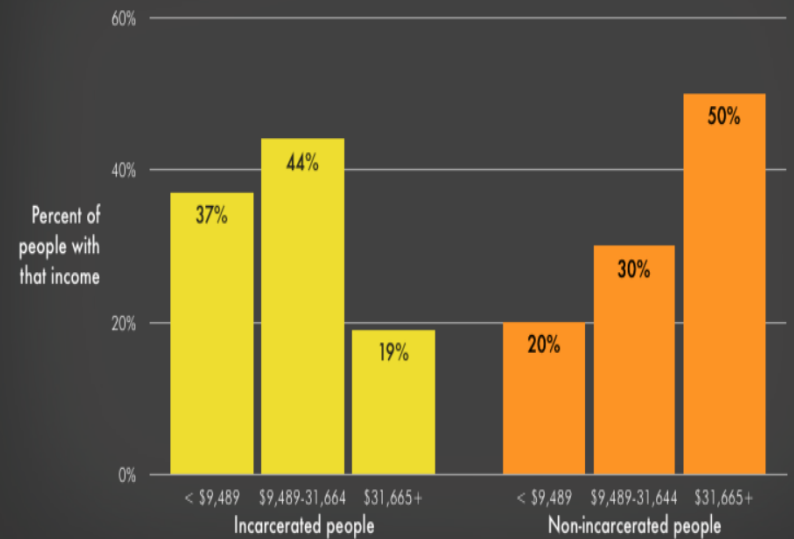
# ECONOMIC DISPARITY

## The money bail system disadvantages low-income people:

- The median bail amount in California is \$50,000 – 5 times the national median (\$10,000).
- Median per capita income for California is \$31,733 – nearly \$20,000 less than the median bail.
- 46% of American adults said they could not cover on their own an emergency expense costing just \$400.
- Nationally, people who are unable to meet bail fall within the poorest third of society.

## Money bail perpetuates an endless cycle of poverty and jail time

(Distribution of annual pre-incarceration incomes for people in local jails aged 23-39 unable to meet bail, as compared to the general population of the same ages)



Source: Compiled by the Prison Policy Initiative from the Bureau of Justice Statistics Survey of Inmates in Local Jails, 2002 and the American Community Survey Integrated Public Use Microdata Series, 2002 for non-incarcerated comparison. Incomes were adjusted for inflation to 2015 dollars. See methodology at <http://www.prisonpolicy.org/reports/incomejails.html>.

**PRISON**  
POLICY INITIATIVE

# RACIAL DISPARITY



# POOR OUTCOMES FOR DEFENDANTS

People who are detained pretrial

**fare far worse** in their criminal cases than those who are free during the pretrial period

They are:

- **25%** more likely to plead guilty to a crime.
- Unable to participate in their defense.
- May plead guilty to crimes they did not commit.

Those held pretrial receive

**harsher punishments**

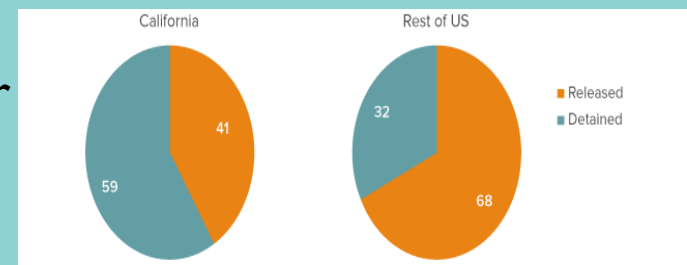
than those able to purchase pretrial freedom

They have a:

- **4x** greater likelihood of being sentenced to jail
- **3x** greater likelihood of being sentenced to prison
- **3x** longer jail sentence
- **2x** longer prison sentence

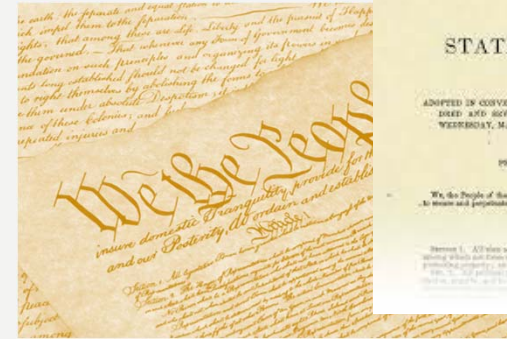
# POOR PUBLIC POLICY

- California relies on pretrial detention at higher rates than the rest of the United States.
- Even with high rates of detention, California has had higher failure-to-appear rates, and higher rates of felony rearrests.
- Our money bail system is unfair and does not protect public safety.



|            | Multiple failures to appear (%) | % rearrested in pretrial period |             |                 |                |
|------------|---------------------------------|---------------------------------|-------------|-----------------|----------------|
|            |                                 | Any felony                      | Drug felony | Property felony | Violent felony |
| California | 6.6                             | 12.4                            | 5.7         | 3.9             | 1.4            |
| Rest of US | 2.9                             | 10.1                            | 3.7         | 3.3             | 1.9            |

# CONSTITUTIONAL LAW



8<sup>th</sup>  
Amendment  
US Const.

No  
Excessive  
Bail

14<sup>th</sup>  
Amendment  
US Const.

Due Process  
& Equal  
Protection

Article 1,  
Section 12  
CA Const

Right to Bail



# THE CALIFORNIA MONEY BAIL REFORM ACT OF 2017 SB 10 & AB 42 (HERTZBERG, BONTA)



# 6 CORE FUNCTIONS OF SB 10



**Eliminates the use of bail schedules both pre-arraignment and once a person goes before a judge.**



**Minimizes the use of money bail, and requires that money bail be set only in an amount a person can pay.**



**Limits pretrial detention only to people who pose a serious risk of physically injuring someone if released.**



**Requires courts to utilize the least restrictive option for release, with a presumption of release without conditions.**



**Creates pretrial services agencies to assist people who have been released pretrial.**



**Limits and regulates the use of risk assessment tools.**

## CURRENT LEGAL/POLICY CLIMATE FOR REFORM

**August  
2017**

Governor, Chief Justice, and SB 10 authors issue a joint statement reaffirming their commitment to working together to move bail reform forward.

**October  
2017**

Chief Justice's Pretrial Detention Work Group issues long-anticipated report., calling for an end to money bail.

**January  
2018**

The 1<sup>st</sup> District Court of Appeal recently rules in *In re Humphrey* that California's bail practices are unconstitutional and called on the legislature to act.

**March  
2018**

The Attorney General – the chief law enforcement officer of the state – announces he will not appeal the *Humphrey* decision and reaffirms commitment to reform --- coincides with Day in Court (Silicon Valley De-Bug).

# SB 10/AB 42 – LEGISLATIVE STATUS

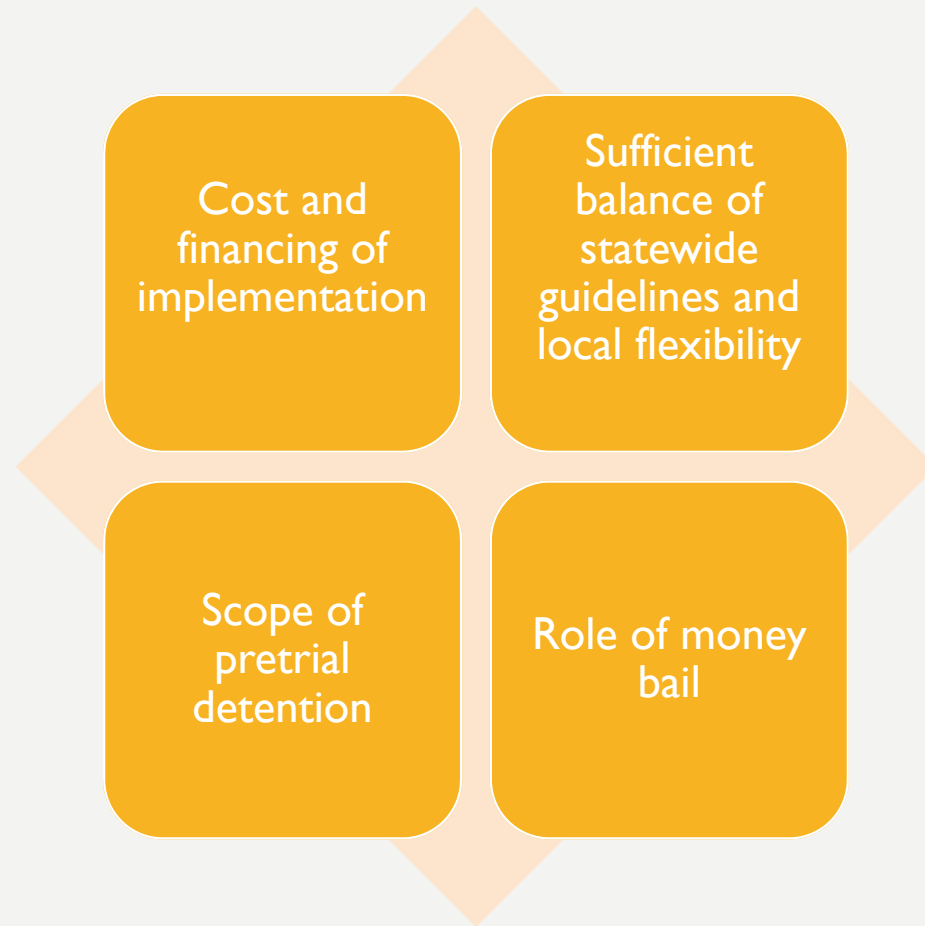
SB 10

- Introduction
- Senate Public Safety Committee: passed
- Senate Appropriations: passed
- Senate Floor: passed
- Assembly Public Safety: passed
- **Current Status:** Assembly Appropriations

AB 42

- Introduction
- Assembly Public Safety Committee: passed
- Assembly Appropriations: passed
- Assembly Floor: failed
- **Current Status:** Dead

# AREAS FOR ADDITIONAL DISCUSSION



# THANK YOU

**Mica Doctoroff**  
**mdoctoroff@acluca.org**

## Sources:

- Sonya Tafoya, *Pretrial Detention and Jail Capacity in California*, Public Policy Institute of California (2015).
- Heaton, et al, *The Downstream Consequences of Misdemeanor Pretrial Detention* (2016), <https://www.law.upenn.edu/live/files/5693-harriscountybail>.
- Bernadette Rabuy and Daniel Kopf, *Detaining the Poor: How money bail perpetuates an endless cycle of poverty and jail time*, Prison Policy Initiative (2016).
- United States Census Bureau, *2015 American Community Survey 1-Year Estimates* (2015), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_15\\_SPL\\_K202002&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_SPL_K202002&prodType=table).
- Pretrial Justice Institute, *Race & Bail in America*, The Pretrial Racial Justice Initiative, <http://projects.pretrial.org/racialjustice/>.
- Pretrial Justice Institute, *Bail in America: Unsafe, Unfair, Ineffective*, <http://www.pretrial.org/the-problem/>.
- Ella Baker Center, *Who Pays?: The True Cost of Incarceration on Families* (2015).