



# SETTING BAIL IN CALIFORNIA

City Attorney's Office, Public Safety Division

City Council  
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## BACKGROUND

1. The purpose of bail is to ensure an arrestee makes his/her court appearances.
2. Bail used to be set according to the County Bail Schedule. Higher bail for more serious crime.
  - Max incarceration 3 years = \$10,000 bail.
  - Max incarceration 5 years = \$30,000 bail.
  - Life in prison = \$1,000,000 bail.
3. Options for arrestee facing a max of 3 years:
  - Deposit \$10,000 with the court.
  - Pay bail bond company 10% (\$1,000) and the bond company posts a bond for \$10,000 with the court.
  - Remain in custody.



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## BACKGROUND

1. People experiencing homelessness usually don't have money for a bail bond, or friends or family willing to pay for a bail bond.
2. Bail schedule is now considered inequitable.
  - Not fair that rich people can pay bail and get out while poor people remain in custody.
  - Societal push to end "mass incarceration"



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## DISCUSSION

1. New CA Supreme Court case weakened the Bail Schedule: Kenneth Humphrey on Habeas Corpus (March 25, 2021) ( 7-0 decision.)
2. "Conditioning freedom solely on whether an arrestee can afford bail is unconstitutional."
3. Pretrial detention should be reserved for those who pose a risk to public or victim safety.



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## IN PRACTICE

Prosecutors will argue to keep arrestees in custody in the appropriate case:

- a) Arrestee poses a danger to victim or public at large.
  - Prosecutor will try to get victim to testify of fear.
  - Multiple re-offender. 10+ open cases.
- b) Arrestee will not appear in court.
  - History of failures to appear.
- c) No lesser means will work
  - Cut off ankle monitor; violated a restraining order, etc.

Bottom Line – The inability to pay bail is no longer a justification to hold an arrestee in custody. More arrestees are going to be released into the community pending the resolution of their criminal cases.



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## QUESTIONS?



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