

Date of Hearing: June 9, 2026
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

SB 562 (Ashby) – As Amended July 8, 2025

SUMMARY: Requires a court to order a refund to an arrestee or defendant of any money paid to a licensed bail surety agent within 30 days in specific circumstances. Specifically, **this bill:**

- 1) Requires a court to order a refund of the bail premium paid to a bail bond company under any of the following circumstances:
 - a) The prosecuting agency files a motion to dismiss a complaint or indictment within 21 days of the defendant's original arraignment, and the defendant's bond has been exonerated.
 - b) The prosecuting agency fails to file charges within 21 days of the posting of the arrestee's bail surety bond and the arrestee has not missed any court appearances where the arrestee's presence is mandatory, and the arrestee's bond has been exonerated.
- 2) Provides that for an arrestee that is not charged within 21 days, the court shall order the licensed bail surety agent to provide a refund to the entities or persons who were billed the money or property of an amount equal to any bail premium paid, less an administrative reimbursement equal to two percent of the bond liability amount and the premium tax paid to the state by a licensed surety company in connection with the posting of the bond.
- 3) Provides that for a defendant who has their case dismissed within 21 days, the court shall order the licensed bail surety agent to provide a refund to the entities or persons who were billed the money or property of an amount equal to any bail premium paid, less an administrative reimbursement for an amount equal to two percent of the bond liability amount and the premium tax paid to the state by a licensed surety company in connection with the posting of the bond.
- 4) Specifies that a court shall order a return of money or property only for a bail surety bond entered into on or after January 1, 2026.
- 5) Contains a severability clause.

EXISTING LAW:

- 1) Prohibits excessive bail. (U.S. Const., 8th Amend. & Cal. Const., art. I, § 12.)
- 2) States that a person shall be granted release on bail except for the following crimes when the facts are evident or the presumption great:

- a) Capital crimes;
 - b) Felonies involving violence or sexual assault if the court finds by clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or,
 - c) Felonies where the court finds by clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released. (Cal. Const., art. I, § 12.)
- 3) States that in setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of their appearing at the trial or hearing of the case; public safety and the safety of the victim shall be the primary considerations. (Cal. Const., art. I, § 28, subd. (f)(3).)
 - 4) Requires the court to consider the safety of the victim and the victim's family in setting bail and release conditions for a defendant. (Cal. Const., art. I, § 28, subd. (b)(3).)
 - 5) Provides that the Judicial Council shall adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. (Cal. Const., art. VI, § 6, subd. (d).)
 - 6) Requires the superior court judges in each county to prepare, adopt, and annually revise a uniform, countywide bail schedule. (Pen. Code, § 1269b, subd. (c).)
 - 7) Specifies if a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance. If that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved. (Pen. Code, § 1269b, subd. (b).)
 - 8) Provides that an arrested person must be taken before the magistrate with 48 hours of arrest, excluding Sundays and holidays. (Pen. Code, § 825, subd. (a).)
 - 9) Authorizes the officer in charge of a jail, or the clerk of the superior court to approve and accept bail in the amount fixed by the arrest warrant, the bail schedule, or an order admitting to bail in case or surety bond, and to issue and sign an order for the release of the arrested person, and to set a time and place for the person's appearance in court. (Pen. Code, § 1269b, subd. (a).)
 - 10) States that if a defendant is arrested without a warrant for a bailable felony offense or for the misdemeanor offense of violating a domestic violence restraining order, and a peace officer has reasonable cause to believe that the amount of bail set forth in the schedule of bail for that offense is insufficient to ensure the defendant's appearance or to ensure the protection of

a victim, or family member of a victim, of domestic violence, the officer shall file a declaration with the judge requesting an order setting a higher bail. (Pen. Code, § 1269c.)

- 11) Allows a defendant to ask the judge for release on bail lower than that provided in the schedule of bail or on his or her own recognizance and states that the judge is authorized to set bail in an amount that he or she deems sufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, and to set bail on the terms and conditions that he or she, in his or her discretion, deems appropriate, or he or she may authorize the defendant's release on his or her own recognizance. (Pen. Code, § 1269c.)
- 12) Provides that, after a defendant has been admitted to bail upon an indictment or information, the Court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the Court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. (Pen. Code, § 1289.)
- 13) States if money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders [themselves] to the officer to whom the commitment was directed, as specified, the court shall order a return of the deposit to the defendant or to the person or persons found by the court to have deposited said money on behalf of the defendant, upon the production of the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate. (Pen. Code, § 1302.)
- 14) States if an action or proceeding against a defendant who has been admitted to bail is dismissed, the bail shall not be exonerated until a period of 15 days has elapsed since the entry of the order of dismissal. If, within such period, the defendant is arrested and charged with a public offense arising out of the same act or omission upon which the action or proceeding was based, the bail shall be applied to that offense. If an undertaking of bail is on file, the clerk of the court shall promptly mail notice to the surety on the bond and the bail agent who posted the bond whenever the bail is applied to an offense, as specified. (Pen. Code, § 1303.)
- 15) Prohibits the release of a defendant on his or her own recognizance (OR) for any violent felony until a hearing is held in open court and the prosecuting attorney is given notice and an opportunity to be heard on the matter. (Pen. Code, § 1319.)
- 16) Specifies conditions for a defendant's release on OR. (Pen. Code, § 1318.)
- 17) Provides that a defendant released on bail for a felony who willfully fails to appear in court, as specified, is guilty of a crime. (Pen. Code, § 1320.5.)
- 18) Specifies that if an on-bail defendant fails to appear for any scheduled court appearance, the bail is forfeited unless the clerk of the court fails to give proper notice to the surety or depositor within 30 days, or the defendant is brought before the court within 180 days. (Pen. Code, § 1305, subds. (a) & (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Sponsor:** Author-sponsored.
- 2) **Author's Statement:** According to the author, “SB 562 is a financial justice bill. This bill allows a person to receive a refund from a bail bond company if: 1) the person uses a bail bond agency to secure their release and 2) no charges are filed by the prosecuting agency within 21 days of the posting of the bond, or the charges are dismissed within 21 days of the arraignment hearing. “Under current law, when no charges are filed or charges are dismissed, the person who uses a bail bond company to secure their release does not get any of their money back. SB 562 simply seeks to remedy this very narrow and unjust circumstance by allowing the person to receive their bonded money back, excluding state tax and administration fees, equal to 2% of the surety bond paid, by the bail bond company.”
- 3) **Bail Generally:** In California, bail is a constitutional right except when the defendant is charged with: (a) a capital crime; (b) a felony involving violence or sex and the court finds that the person’s release would result in great bodily harm to another; or (c) when the defendant has threatened another and the court finds it likely that the defendant might carry out that threat. The constitution also allows for an arrestee to be released upon a written promise to appear, known as release on own recognizance. The constitution prohibits excessive bail. (Cal. Const. art. I, § 12.)

Courts require many defendants to deposit monetary bail in order to be released from custody. Bail is intended to act as a financial guarantee to the court that the defendant will appear for all required court hearings. An arrestee may post bail with his or her own cash, or may post bail using a bail bond.

Currently, each county sets a bail schedule based exclusively on the charged offense. The bail schedule is used by the arresting officer to allow an arrestee to post bail before their arraignment. Once a defendant is brought before the court, there must be an individualized determination of the appropriate amount of bail, or if a defendant is eligible for a recognizance release. The defendant, or someone acting on their behalf, may deposit cash with the court in lieu of obtaining a bail bond. The cash must be the sum fixed by the bail order or schedule. Jailers are also authorized to accept cash. However, the clerk of the court may not accept a general assistance check for any part of the deposit. (See Pen. Code, § 1295, subd. (c).)

If a bail bond is posted by a surety (bail agency), it remains in effect until the completion of the pronouncement of judgment or grant of probation or until a new bond is required due to an increase or a forfeiture of bail. (See *People v. Allied Fidelity Ins. Co.* (1978) 82 Cal. App. 3d 242, 246–247.) A bail bond is commonly provided by a commercial bonder, acting as an agent for an insurer. (See Ins. Code, § 1800 et seq.)

The professional surety charges the defendant a nonrefundable fee, usually ten percent of the face value of the bond, and usually requires the defendant to post security. If the defendant is unable or unwilling to obtain a commercial bond, he or she may seek the aid of a private surety (third party individual with money). Such a surety must be a resident, householder, or

freeholder within the state, and, at the court's discretion, within the county where the bail is offered. (Pen. Code, § 1279.)

Exoneration releasing the surety from obligations on the bail bond or deposit occurs after the defendant appears, as required. For example, if the defendant pleads guilty and is sentenced at a scheduled court state, the bond is exonerated. (See Pen. Code, § 1195.)

Bail is also exonerated when a case is dismissed unless the court orders the case re-submitted. A court must exonerate bail within 15 days after a court directs a complaint to be dismissed, unless the defendant is arrested and charged with a new offense arising out of the original act or omission. In such a case, the bail is applied against the new charge. (See Pen. Code, § 1302.)¹

A bond may be forfeited if a defendant fails to appear without justification. Thereafter, the defendant or the bail agent has 180 days to bring the defendant before the court or the bail amount posted by the surety is forfeited. (Pen. Code, § 1305, subd. (a).)

- 4) **Regulation of Bail Rates:** The amount a surety may charge for bail is set by the California Insurance Commissioner (CIC). According to the CIC website:

Bail bonds are negotiated in several ways. Bail agents usually charge ten percent of the bail amount as the fee. For example, on a \$25,000 bail the ten percent fee is \$2,500. However, to become more competitive, a bail agent may choose to negotiate a lower fee by rebating, as allowed by Proposition 103. This is accomplished by calculating a lower fee percentage as a 'rebate' back to the bailee. Prevailing market conditions often dictate how much a bail agent must rebate in order to remain competitive. Thus, the amount of the fee can be lowered anywhere from an eight percent fee to a two percent fee (i.e., 8% of \$25,000 is \$2,000 and 2% is \$500.) Some bail bond companies also offer "credit bail," where a down payment is made and partial payments are accepted until fully paid.²

The Bail Bond Regulatory Act was first adopted in 1937 and provided the statutory framework to regulate the bail bond business under the California Department of Insurance (CDI). The law also provided CDI with the authority to adopt administrative regulations. CDI's Licensing Services Division is responsible for licensing bail agents.

In 1988, the voters approved Proposition 103, an initiative measure entitled the Insurance Rate Reduction and Reform Act. Among other provisions affecting certain types of insurance, Proposition 103 imposed a rate rollback and required that any subsequent rate increase, prior to its use, be approved by the CIC. Section 8, subdivision (b) of Proposition

¹ See generally, [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.insurance.ca.gov/0400-news/0100-press-releases/archives/upload/California-Department-of-Insurance-An-Exploration-of-California-s-Bail-System-Overview-1-31-17.pdf](https://www.insurance.ca.gov/0400-news/0100-press-releases/archives/upload/California-Department-of-Insurance-An-Exploration-of-California-s-Bail-System-Overview-1-31-17.pdf)

² *Ibid.*

103 provides: “The provisions of this act shall not be amended by the Legislature except to further its purposes.”

Proposition 103 also requires a system wherein the CIC must approve a rate applied for by an insurer, known as the “prior approval” system, before an insurer can implement property and casualty insurance rates. The following lines of insurance are regulated by Proposition 103: Personal automobile, dwelling fire, earthquake, homeowners, inland marine, and umbrella; Commercial aircraft, automobile, boiler and machinery, burglary and theft, business owners, earthquake, farm owners, some fidelity, fire, glass, inland marine, medical malpractice, miscellaneous, multi-peril, other liability, professional liability, special multi-peril, umbrella, and coverage under the United States Longshoremen's & Harbor Workers' Compensation Act.

In 1995, the California Supreme Court struck down a bill that would have exempted surety companies from the requirements of Proposition 103. (See *Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1265.) Accordingly, surety companies, including bail sureties, are subject to CIC rate-setting.

This bill arguably changes the rate set by the CIC of 10% and allows the payee to receive all but 2% back in specific circumstances. While that may act as a ceiling, not a floor, this bill may be a mandatory rate change in any case in which a defendant is not charged in a timely fashion or the charges are dismissed. Accordingly, this bill may violate the requirements of Proposition 103. According to the author, the Insurance Commissioner suggested this does not violate Proposition 103.

- 5) **Bail Reform Efforts:** There are a number of challenges in the money bail system. A growing number of people acknowledge that the bail system has a negative impact on communities of color and those who come from the lower end of the socio-economic spectrum. In short, those who have money have the ability to confront their criminal charges while free from confinement in county jail.

Those who are too poor to post bail are forced to remain incarcerated, and are more likely to plead guilty in order to get out of custody. Prior to the initial court appearance, the determination as to who remains detained while awaiting resolution of criminal charges is made based on money, and not whether the person is a present danger to the community or whether the person will return to court. The ability to be out of custody while facing criminal charges carries a number of inherent advantages. A defendant who is released on bail is able to carry on with his or her life while awaiting the disposition of the criminal case. For instance, criminal defendants who are out on bail are not only able to maintain employment but are also encouraged to do so. According to a 2023 Report issued by the California Penal Code Revision Commission:

(1) Pretrial detention is often the single best predictor of case outcomes. It increases the likelihood of a conviction and the severity of a conviction and sentence while reducing future employment and access to social safety nets.³

³ California Committee on Revision of the Penal Code, 2023 Annual Report and Recommendations, p. 55.

(2) Rates of pretrial detention are higher on average for people of color and bail amounts are also consistently higher for Black and Latino defendants.⁴

(3) The severity of pretrial detention and cascading negative consequences from being incarcerated can often exert undue pressure on people held in custody to plead guilty.⁵

(4) According to the Prison Policy Initiative, pretrial detention has negative consequences for public safety. Any time spent in pretrial detention beyond 23 hours is associated with a consistent and significant increase in the likelihood of future re-arrest.⁶

(5) According to Advancing Pretrial Policy and Research, excessive conditions of pretrial release do not appear to reduce re-arrest rates, but instead unnecessarily subject people to technical violations and revocation of bail.⁷

(6) A law requiring a 60-day automatic conditions review hearing for pretrial electronic monitoring was passed in Illinois in 2021.⁸ Michigan has introduced comparable policy this session.⁹

The Budget Act of 2019 (AB 74 (Ting), Ch. 23, Stats. 2019) allocated \$75 million to the Judicial Council to launch and evaluate two-year pretrial projects in local trial courts.¹⁰ The projects sought to increase the release of arrestees before trial in a safe and efficient manner, use the least restrictive monitoring practices possible while protecting public safety and ensuring court appearances, validate and expand the use of risk assessment tools, and assess any bias. In August 2019, the Judicial Council approved and distributed funding to the 16 pilot projects selected for participation in the Pretrial Pilot Program. By the conclusion of the pilot program, 14 of 16 pilot projects had implemented a court date reminder system which provides text message and phone call notifications to all individuals as pretrial release. Initial data showed that court appearances after the implementation of a court date reminder system increased significantly.

The final report on the Pretrial Pilot Program issued in 2023 suggested an overall positive impact of the program including increased pretrial release and a decrease in re-arrest rates for

⁴ California Committee on Revision of the Penal Code, 2022 Annual Report and Recommendations, p. 66.

⁵ California Committee on Revision of the Penal Code, 2023 Annual Report and Recommendations, p. 55.

⁶ Prison Policy Initiative, “Releasing people pretrial doesn’t harm public safety,” July 6, 2023.

⁷ Advancing Pretrial Policy and Research, Pretrial Research Summary: Pretrial Monitoring, p. 3.

⁸ 2021 (Illinois State Legislature, HB 3653 (Public Act 101-0652), 101st General Assembly, 2021, ilga.gov/legislation/BillStatus.asp?DocNum=3653&GAID=15&DocTypeID=HB&LegId=120371&SessionID=108&GA=101).

⁹ (Michigan State House of Representatives, House Bill 4656, 102nd Legislature, 2023, legislature.mi.gov/documents/2023-2024/billintroduced/House/pdf/2023-HIB-4656.pdf).

¹⁰ https://courts.ca.gov/sites/default/files/courts/default/2024-12/pretrial-pilot-program_final-report.pdf

misdemeanors and felonies. The Budget Act of 2021 allocated ongoing funding to the Judicial Council for the implementation or expansion of pretrial programs in all California courts.

In 2021, the California Supreme Court also held that mere inability to afford bail is not a constitutional basis to hold a defendant pre-trial. The court in *In re Humphreys* held:

The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional. Other conditions of release—such as electronic monitoring, regular check-ins with a pretrial case manager, community housing or shelter, and drug and alcohol treatment—can in many cases protect public and victim safety as well as assure the arrestee's appearance at trial. What we hold is that where a financial condition is nonetheless necessary, the court must consider the arrestee's ability to pay the stated amount of bail—and may not effectively detain the arrestee “solely because” the arrestee “lacked the resources” to post bail. (*In re Humphrey* (2021) 11 Cal.5th 135, 143.)

While California continues to allow for money bail, it also has created alternate avenues for low-income defendants who do not pose a public safety risk to be released from custody without having to post any type of bail. Importantly, low income defendants often have no means to post bail at all. Low income defendants have to either remain in jail for the duration of their case or wait for arraignment and hope for an own recognizance release. This bill appears to more likely benefit arrestees that have the means to post bail before arraignment or who are able to post bail at all.

- 6) **SB 10 and 2020 Referendum:** SB 10 (Hertzberg), Chapter 244, Statutes of 2018 was signed into law on August 28, 2018. SB 10 eliminated cash bail in California. In its place, SB 10 created a risk-based non-monetary pre-arraignment and pretrial release system for people arrested for criminal offenses including preventative detention procedures for person's determined to be too high a risk to assure public safety if released.

A veto referendum to overturn the law was filed on August 29, 2018. On January 16, 2019, the California Secretary of State reported that the estimated number of valid signatures exceeded 110 percent of the 365,880 required signatures, putting the targeted law, SB 10, on hold until the November 2020 election. The referendum was identified as Proposition 25 on the ballot. A “Yes” vote indicated a preference to uphold the statutory changes made by SB 10 and end the use of cash bail in California.

Voters rejected SB 10 by a margin of 55% to 45%. The voters' veto of SB 10 maintained the existing structure of cash bail for criminal defendants in California. In the case of *Assembly v. Deukmajian*, the California Supreme Court provided the following guidance to the Legislature when it seeks to enact new legislation in an area where the voters have rejected an earlier legislative effort by means of a referendum:

Unless the new measure is ‘essentially different’ from the rejected provision and is enacted ‘not in bad faith, and not with

intent to evade the effect of the referendum petition,' it is invalid.'¹¹

In this case, this bill is likely substantially different than anything having to do with direct money bail. Rather, it just allows for the return of a bail surety if a defendant is not charged or charges are dismissed in a specific timeframe. However, despite admitted concerns with the discriminatory nature of money bail, the voters appear to approve of it.

In 2022, the Legislature again attempted to address bail. SB 262 (Hertzberg) would have proposed, in part, something similar to this bill but with a few important differences. First, SB 262 spent most of the Legislature year as requiring zero bail for all offenses except serious or violent felonies, violations of specified protective orders, stalking, looting, battery against a spouse, sex offenses and driving under the influence, among others. The proposed return of bail money language similar to this bill was just one part of that bill.

Additionally, SB 262 required a court to order a return of money or property paid to a bail bond company when an individual makes all court appearances in a criminal case charged in connection with the arrest or where no charges are filed within 60 days. However, it also stated that a bail bond licensee is entitled to retain a surcharge not to exceed 10 percent of the amount paid by the arrestee or on behalf of the arrestee. This bill is different in various ways including requiring return of all but a two percent administrative fee based on the bail liability.

This bill proposes to allow the surety to retain *"two percent of the bond liability amount."* The bond liability amount refers to the total coverage of the bond, the maximum amount payable by the surety if the principal defaults on their obligations. So, if the bail amount set by the court is \$1,000 – a bond in California would likely be \$100 (the amount the arrestee pays plus any needed collateral to make up the entire \$1000). Under the terms of this bill, two percent of the bond liability amount would be two percent of \$1000, or \$20.

Therefore, this bill is quite a bit different than SB 262 (Hertzberg) which attempted to address the inequities and discrimination around bail generally in the criminal justice system.

- 7) **Marsy's Law:** In 2008, the voters passed Proposition 7, known as Marsy's Law, to enshrine victim rights into the California Constitution. Marsy's Law requires, among other things, that victims be consulted and have input in the criminal justice system. Section 28, subdivision (f) expressly deals with bail and pre-trial release and states:

Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the

¹¹ *Assembly v. Deukmejian* (1982), 30 Cal.3d 638, 678 (citing *Reagan v. City of Sausalito* (1962), 210 Cal.App.2d 618, 629-631 and *Martin v. Smith* (1959), 176 Cal.App.2d 115, 118-119).

probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes. (Emphasis added.) (Cal. Const., art. 1, § 28, subd. (f)(3).)

According to several bail surety groups, the exoneration of bail and the return of any premium necessarily means the defendant is released from the care and custody of the surety and either returned to custody or released on their own recognizance, regardless of any public safety considerations.

Accordingly, this bill may violate the constitutional requirements of Marsy's Law because it does not require any hearing on the record as to whether a person's risk to public safety counsels against an own recognizance release. This bill only requires, in relevant part, that a person who is arrested not been charged within 21 days and made all their appearances. In most cases, however, when a person is released on bail, their subsequent court dates may be delayed more than a month to accommodate in-custody arraignments. It is not clear whether a defendant who bails out before being charged will be returned to court in less than 21 days. According to the California District Attorneys Association:

It is not uncommon for prosecutor's offices to delay filing charges to conduct additional investigation and properly determine whether charges are legally warranted. Law enforcement and district attorney resource issues may also delay charging beyond the 21-day period contemplated in [this] bill. When these delays occur, arrestees who have posted bond, are released from custody, and then receive a letter to appear in court. When this letter is issued, the bail company has a vested interest in securing the defendant's appearance and will make efforts to do so. Under this bill, since the bond is exonerated after 21 days, bail companies will no longer have any interest in the case, and defendants will more frequently fail to appear in court due to both inadvertence and willful absence. This in turn will increase in the issuance of warrants and only add to the already huge backlog of unserved arrest warrants. Inevitably, [this] bill will serve to increase public safety risks and create more delays in the justice system...

- 8) **In re Kowalczyk:** On April 30, 2026, the Supreme Court laid out the constitutional requirements of bail in relationship to Marsy’s Law. As noted above, *In re Humphrey* held that the defendant’s financial ability to pay must be a factor in setting bail. Mr. Kowalczyk, a homeless mentally ill person, was arrested for trying to use two lost credit cards at a fast food restaurant but was ultimately unsuccessful. The court initially set his bail at \$75,000 and then denied bail based on the defendant’s long criminal history of petty crimes. The Court considered to what extent, if at all, Article I, section 28, subdivision (f) change the requirements of bail in section 12. The court stated:

In Humphrey, we held that the common practice of detaining criminal defendants based solely on their financial condition violated state and federal equal protection and due process principles. To protect against this violation, we held that courts may not condition release on posting bail unless they “consider an arrestee’s ability to pay alongside the efficacy of less restrictive alternatives” to money bail. (*Humphrey* at p. 152.) We also held that while constitutional principles did not “categorically prohibit the government from ordering pretrial detention, ... “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”” (*In re Kowalczyk*, 2026 Cal. LEXIS 2206, *5, citing *Humphrey* at p. 155.)

The Court determined that Article I, section 12, subdivision (a) and (b) are the stated grounds to deny bail or impose an unreachable bail. Article I, section 12 states:

A person shall be released on bail by sufficient sureties, except for:

- (i) Capital crimes when the facts are evident or the presumption great;
- (ii) **offenses involving acts of violence on another person, or felony sexual assault offenses on another person**, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person’s release would result in great bodily harm to others; or
- (iii) felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.
- (iv) Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant,

and the probability of his or her appearing at the trial or hearing of the case.

- (v) A person may be released on his or her own recognizance in the court's discretion. (Cal. Const., art. I, § 12.)

The *Kowalczyk* court reconciled section 12 with section 28 explaining that the two sections are not mutually exclusive. Marsy's law, as noted, focuses on public safety in determining bail. The Court explained that section 28 did not expand the list of offenses for which a court may deny bail. Therefore, section 12 still controls the types of offenses for which the court may deny bail – either in fact or by imposing an excessive bail.

We conclude that section 12, subdivisions (b) and (c) and section 28(f)(3) can be reconciled in the following manner: In noncapital cases, a trial court has the authority to deny bail only as to offenses specified in section 12, subdivisions (b) and (c). Section 28(f)(3) refers to the possibility that a defendant “may” be released on bail and mandates that a trial court place primary importance on public and victim safety in making bail determinations. However, section 28(f)(3) does not expand the list of offenses for which release on bail may be denied beyond those delineated in section 12, subdivisions (b) and (c). (*In re Kowalczyk*, 2026 Cal. LEXIS 2206, *6.)

- 9) **Possible Contracts Clause Issue:** The U.S. Constitution states that “no state shall . . . pass any . . . law impairing the obligation of contracts.” (U.S. Const., art. I, Sec. 10, cl. 1.) Similarly, the California Constitution states that “A . . . law impairing the obligation of contracts may not be passed.” (Cal. Const. art. I, § 9.) The U.S. Supreme Court held, “The laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it.” (*Wood v. Phillips* (1941) 313 U.S. 362, 370.) As Justice Holmes stated, however, “One whose rights . . . are subject to state restriction, cannot remove them from the power of the State by making a contract about them.” (*Hudson County Water Co. v. McCarter* (1908) 209 U.S. 349, 357.) In a case where the Court found states have some power to pass laws that impact private contracts, the Court also wrote, “The obligations of a contract are impaired by a law **which renders them invalid, or releases or extinguishes them.**” (*Home Building & Loan Assn. v. Blaisdell* (1934) 290 U.S. 398, 431.)

The Court applies a two-part test to determine whether a law impairs a contract. (*Sveen v. Mellin* (2018) 584 U.S. 811.) The first part of the test asks whether state law must operate as a “substantial impairment” of a contractual relationship. (*Ibid.*) To determine whether a substantial impairment has occurred, the Court considers the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating [their] rights. (*Ibid.*) The second part says if substantial impairment is present, then the means and ends of the legislation is analyzed to determine whether the impairment violates the Contracts Clause. (*Ibid.*) Here, courts evaluate whether the state law is an appropriate and reasonable means of advancing “a significant and legitimate public purpose.” (*Energy Reserves Group, Ltd. v. Kansas Power and Light Co.* (1983) 459 U.S. 400, 411.)

In this case, if a prosecutor does not file charges against an arrestee within 21 days and the arrestee has made their court appearances, the court must order reimbursement of the bond amount.¹² The bail reimbursement appears to operate as a matter of law at 30 days. As noted above, there is no hearing in which a bail company may be heard as to the harm imposed if the contract is voided and the bond is reimbursed. Since California still has a money bail system, bail agencies are lawfully allowed to contract with arrestees for services at a fair price. Furthermore, bail companies are just sureties. Bail companies obtain funds from other financial institutions, such as banks and other insurance companies.

A contracts clause claim requires a law to substantially impair a contractual agreement. While this bill states it only applies to bail set on or after January 1, 2026, surety contracts with financial institutions may pre-date a change in the law. If a bail agency is required to reimburse the bond minus the 2% administrative fee, it may impair the bail agency's agreement with their financial lender and reduce their overall capitalization, resulting in their breach of an existing lending agreement.

10) **Argument in Support:** According to *Californians for Safety and Justice*, “When an individual is arrested and the court determines the bail amount, they typically have two options: pay the full bail amount directly to the court or use a bail bond agency to secure their release. Bail amounts vary greatly depending on the alleged crime, ranging from thousands to millions of dollars for more serious offenses.

“Many people from low-income and marginalized communities are much more likely to secure their release through a bail bond agency, because they do not have enough money to pay the court in full. The only alternative – staying in jail – can lead to losing jobs, missing rent payments, and facing other life-altering consequences.

“Californians for Safety and Justice has helped drive many of the policies that have made the state the nation's leader in ending the overuse of incarceration. We work to replace prison and justice system waste with common sense solutions that create safe neighborhoods through policy advocacy, grassroots organizing, public education, community-based partnerships and support for local best practices. We promote strategies to stop the cycle of crime, reduce reliance on incarceration, and build healthy communities.

“At the heart of it, SB 562 is a financial justice bill. SB 562 seeks to remedy the very narrow and unjust circumstance where someone is arrested, pays a fee to a bail bond agency to

¹² In a misdemeanor case, even if a defendant is out on bail, the prosecutor must file charges within 25 days, or the defendant must be re-arrested again. (Pen. Code, § 853.6, subd. (e)(3).) The Sixth Amendment right to a speedy trial demands that those arrested must be charged within 72 hours if the person is in custody. (*People v. Buchanan* (2022) 85 Cal.App.5th 186, 193.) However, on a felony, a prosecutor may delay in charging the defendant assuming they are out of custody on bail and there is sufficient probable cause to support the arrest. (See *People v. Spicer* (2015) 235 Cal.App.4th 1359, 1373.)

secure their release but then no charges are filed against them, or charges are dismissed before trial. By allowing the person to receive their bonded money back, excluding administration fees to the bail bond agency, SB 562 seeks to ensure a narrowly tailored group of people are not burdened with a lifetime of debt.”

- 11) **Argument in Opposition:** According to the *Riverside Sheriff's Association*, “SB 562 requires the court to order, in essence, a refund of 80% of the premium paid if the case is dismissed or charges are not filed within 21 days of the defendant’s arraignment or the posting of the bail bond. As a result, bail companies are likely to restrict their issuance of bonds to those cases where the defendant is most likely to be charged.

“Such a decision would lead to the opposite result this bill seeks to obtain. Bail companies are likely to conclude that the financial risk of issuing bail bonds in these cases is not worth the 2% of the bail amount that they would receive. People who cannot afford to post the entire bail amount will be forced to remain in jail, even if their cases are either not filed or dismissed. This will exacerbate current jail overcrowding conditions. Conversely (and ironically), bail agents would be more likely to provide bail to those who will stand trial and, in many instances, be convicted of the crimes they are alleged to have committed.

“Additionally, SB 562 limits the way courts process matters through hearings, which improperly impacts victims by precluding their statutorily-authorized participation under “Marsy’s Law,” potentially denying them information in cases involving the release of the person who allegedly committed a crime against them, and not providing clarity for release conditions on those for whom charges may be fully filed after the bill’s 21-day time period. While our organizations rarely weigh in on business-related issues, we cannot remain neutral concerning the impact SB 562 will have on our jails and the criminal justice system overall.”

12) **Related Legislation:**

- a) AB 1877 (Stefani) provides that if there is an allegation that the defendant violated a restraining order or protective order and it resulted in a physical injury to the victim, the court, in considering the seriousness of the offense charged and the protection of the public, shall include consideration of the violation of the protective order or stay-away order and alleged injury to the victim in setting, reducing or denying bail. AB 1877 has been referred to the Senate Public Safety Committee.
- b) AB 1927 (Krell) creates the Bail Consumer Protection Act and prohibits a bail agent or someone impersonating a bail agent from engaging in authorized solicitation of bail to a family member or known contact of an arrested individual for purposes of bail bond services. AB 1927 has been referred to the Senate Public Safety Committee.

13) **Prior Legislation:**

- a) AB 2391 (V. Fong), of the 2023-2024 Legislative Session, would have amended the definition of “public safety” to include protection from physical or economic injury for the purpose of the court determining whether a defendant should be released on their own recognizance in a misdemeanor case. AB 2391 was referred to, but never heard in the Assembly Committee on Public Safety.

- b) SB 1133 (Becker), of the 2023-2024 Legislative Session, would have required, at an automatic bail review hearing, a court to determine whether there remains clear and convincing evidence of a risk to public safety or the victim, or a risk of flight, and that no less restrictive alternative can *reasonably* protect against that risk, and entitles a defendant who has nonmonetary conditions of release, other than those specified, to an automatic review of those conditions at the next regularly scheduled court date after the defendant has been in compliance with those conditions for 60 days. SB 1133 was vetoed.
- c) AB 329 (Bonta), of the 2021-2022 Legislative Session, would have required bail to be set at \$0 for all offenses except, among others, serious or violent felonies, violations of specified protective orders, battery against a spouse, sex offenses, and driving under the influence. AB 329 was never heard in the Assembly Appropriations Committee.
- d) SB 262 (Hertzberg), of the 2021-2022 Legislative Session, would have required zero bail for all offenses except serious or violent felonies, violations of specified protective orders, stalking, looting, battery against a spouse, sex offenses and driving under the influence, among others. SB 262 failed passage on the Assembly floor.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-recidivism Coalition
California Attorneys for Criminal Justice
California Civil Liberties Advocacy
California Department of Justice
California Public Defenders Association
California Public Defenders Association (CPDA)
Californians for Safety and Justice (CSJ)
Courage California
Debt Free Justice California
Ella Baker Center for Human Rights
Greater Sacramento Urban League
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Local 148 Los Angeles County Public Defender's Union
Nasw California
Rubicon Programs
Smart Justice California, a Project of Beyond Impact
Vera Institute of Justice
Western Center on Law & Poverty, INC.

Opposition

A Bail Bond Agency
Afuera Bail Bonds
All American Bail Bonds
All Pro Bail Bonds
All-pro Bail Bonds, INC.
Alvarado Bail Bonds
American Bail Coalition
Angels Bail Bonds
Arcadia Police Officers' Association
Armando S. Espinoza Bail Bonds
Bad Boys Bail Bonds
Bail Bond Professionals
Bail Bond Woman
Bob Drake Bail Bonds
Brea Police Association
Burbank Police Officers' Association
California Bail Agent Association
California Bail Agents Association
California District Attorneys Association
California Narcotic Officers' Association
California Partnership to End Domestic Violence
California Reserve Peace Officers Association
Carson Bail Bonds
Claremont Police Officers Association
Corona Police Officers Association
Cow-boy Bail Bonds
Crime Survivors Resource Center
Crime Victims United of California
Culver City Police Officers' Association
Exit Bail Bonds
Fullerton Police Officers' Association
Gloria Mitchell Bail Bonds
Golden State Bail Agents Association, INC.
Holly Bail Bonds INC.
Homequest Bail Bonds
Intrastate Bail Bonds
Iron Bail Bonds
Kenny Ware Bail Bonds
Lexington National Insurance Corporation
Licensed Bail Agent
Lil' Zeke's Bail Bonds
Mcmains Bail Bonds
Murrieta Police Officers' Association
Newport Beach Police Association
Orange County Business Council
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association

Pomona Police Officers' Association
Redwood Bail Bonds INC.
Riverside Police Officers Association
Riverside Sheriffs' Association
Sacramento County Sheriff Jim Cooper
San Diego County Sheriff's Office
Smokin' Ace Bail Bonds
Superior Bail Bonds
T. Jennings Bail Bonds
Trinity Bail Bonds
Two Jinn INC.
Yusef Odeh Bail Bonds
Zenith Bail Bonds
5 private individuals

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