

California Department of Insurance



Insurance Commissioner Dave Jones

Recommendations for California's Bail System

February 2018

OVERVIEW

The California Department of Insurance (CDI) held a public hearing on January 31st, 2017, relating to the bail system in California. The agenda, background document, and audio of the hearing are available on CDI's website at <https://www.insurance.ca.gov/0400-news/0100-press-releases/2017/statement011-17.cfm>. The goal of the hearing was to explore the bail system in California, including the current structure and process, and to hear from various interested parties about their perspectives on the current bail system and potential options for reform.

CDI has regulated the bail bond business since the passage of the Bail Bond Regulatory Act in 1937. The Department's regulatory activities include the licensing of bail agents, investigating and enforcing their activities, prosecuting administrative cases, collaborating with city and district attorneys on criminal cases, and determining whether the rates that sureties and bail agents charge are fair and adequate.

Insurance Commissioner Dave Jones has sponsored several bills in the realm of bail. In 2012, he successfully sponsored Assembly Bill 2029, authored by Assembly Member Tom Ammiano, which reestablished the "Bail Fugitive Recovery Persons Act." In 2015, he sponsored Assembly Bill 1406, authored by Assembly Member Rich Gordon, and in 2016, he sponsored Assembly Bill 2449, authored by Assembly Member Susan Talamantes Eggman, both of which attempted to create a dedicated funding source within the Department specifically for the regulation and enforcement of bail, with a portion of the fund going to local district and city attorneys to prosecute bail cases. Unfortunately the 2015 and 2016 legislation was not enacted and the Department continues to seek adequate resources to properly police the bail system.

Two fundamental concepts were highlighted at the hearing earlier this year: 1) California needs to address its inequitable bail system that detains people who are unable to afford bail while releasing wealthier people who are able to pay bail; and 2) California needs to improve the oversight and regulation of the bail industry. CDI respectfully suggests California enact statutes and regulations that improve the bail system.

FINDING 1: CALIFORNIA SHOULD REFORM THE OVERALL BAIL SYSTEM

A bail agent provides a means for an incarcerated person to be out of custody until his or her day in court, allowing the defendant to continue his or her day-to-day life until the legal matter has been resolved. However, California bail schedules are among the highest in the nation and many arrestees cannot afford to make bail; approximately 62% of California's county jail population is made up of people awaiting trial or sentencing, costing taxpayers approximately \$100 to \$200 per day per inmate. The disparate impact of the bail system upon poor people has caused many stakeholders to consider alternatives to cash bail which support the same policy goals of promoting public safety and ensuring court appearances. Commercial bail bonding is illegal in Kentucky, Illinois, Oregon, and Wisconsin, and many states have significantly limited the use of money bail.

Discussing the need to reform the inequitable bail system has been advocated by reformers since the Bail Reform Act of 1966, yet cash bail still contributes to the unnecessary pretrial detention of many low-risk defendants simply because they are poor. From the California Law Review's 1968 article "Tinkering with the California Bail System" and 1969 article "Beyond the Bail System: A Proposal for Pretrial Release in California" to most recently the October 2017 Judicial Council of California recommendations to the Chief Justice, there have been many reports and studies over the years which have highlighted the need for bail reform in California.

The April 2017 Human Rights Watch report “‘Not in it for Justice:’ How California’s Pretrial Detention and Bail System Unfairly Punishes Poor People” found that the current bail system in California pressures the poor into pleading guilty in order to be released from jail while others may incur debt to make bail due to California’s median bail rates five times that of the rest of the country. The report concluded that California should reform the bail system by expanding its laws to exclude any pretrial detention for all misdemeanor and non-serious felony cases, with few exceptions to promote public safety. Similar conclusions can be found in the Public Policy Institute of California’s 2015 report “Pretrial Detention and Jail Capacity in California,” which illustrated that although the rationale for pretrial detention is to ensure court appearances and preserve public safety, California’s high rates of pretrial detention are not associated with those goals. The report concluded that pretrial services programs could address jail overcrowding and effectively improve pretrial release decision making. Furthermore, the Judicial Council of California 2017 recommendations determined that California’s current bail system unnecessarily compromises victim and public safety because it bases a person’s liberty on financial resources rather than the likelihood of future criminal behavior and exacerbates socioeconomic disparities and racial bias.

Further studies have provided in-depth analyses on how best to shape and implement reforms. The United States Department of Justice National Institute of Corrections’ 2014 report “Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform” as well as Harvard Law School’s Criminal Justice Policy Program 2016 report “Moving Beyond Money: A Primer on Bail Reform” both provide education on the history of bail, the negative consequences, and recommendations on how the country can reach pretrial justice. As the Californians for Safety and Justice and Crime & Justice Institute’s 2015 report titled “Pretrial Progress: A Survey of Pretrial Practice and Services in California” found, most California counties are currently utilizing some kind of pretrial services but overarching reform in state policy is still needed. Many counties already serve as concrete examples of pretrial reform success, such as Santa Cruz, which has reported in their 2015 “Alternatives to Custody Report” that the use of enhanced pretrial services, supervised release, and Warrant Reduction Advocacy Project referrals has reduced the jail population by more than 15,000 plus beds per day during 2015, which equates to a cost avoidance of over \$1.3 million annually. Santa Clara County also recently approved the most extensive bail reform plan in California as the result of a two-year long working group.

Individual stories can be seen through *Riana Buffin and Crystal Patterson v. City and County of San Francisco*, which is currently pending before Judge Yvonne Gonzalez Rogers in the Northern District of California and challenges the constitutionality of cash bail. Plaintiff Riana Buffin’s story illustrates the inherent inequalities in California’s bail system. Nineteen year old Buffin was arrested for grand theft from a department store and for conspiracy. Upon reaching jail, she was informed that she would be set free if she posted bail of \$30,000, but would be kept in jail otherwise. Buffin is indigent, making only \$10.25/hour working at Oakland Airport; she lives with her mother, who is on disability income, and acts as caretaker for her three younger brothers, two of whom have severe disabilities. Buffin was unable to pay her bail amount due to her indigency; she was held in jail for approximately forty-six hours, after which she was released when the District Attorney declined to file charges against her.

Buffin’s forty-six hours in jail subjects her to both short and long term destabilizing effects. Individuals are subjected to generally unsafe and unsanitary conditions, as many jails lack resources and suffer from overcrowding. About 1,000 people die in American jails every year and about a third of those are suicides. An individual’s first time in confinement is often shocking and traumatic. Suicide rates are significantly lower for convicted inmates. Besides the

physical and psychological damage a person will face in pretrial detention, they also face the threat of losing their job, home, and/or children. Additionally, low-risk individuals who spend as little as forty-eight to seventy-two hours in pretrial detention are increasingly more likely to reoffend both before and after trial. Approximately twenty five percent more likely to plead guilty and statistically are shown to receive longer sentences. If Buffin had been able to post bail and her charges were then dropped, she would have still been indebted to a bail agent, which would have caused her further financial and emotional strain.

Contrast Buffin's story with that of Tiffany Li, who was recently charged with killing her ex-boyfriend and father of their two children. Although the state court set her bail at \$35 million, the eighth highest bail amount ever in the United States, Li's affluence allowed her to post over \$60 million in cash and property and she was released pretrial on bail. Another example of the disparate bail impact is the case of celebrity singer and songwriter Chris Brown, who was arrested in 2016 on suspicion of assault with a deadly weapon, but was released pretrial after posting \$250,000 bail. The current bail system in California is imbalanced and allows wealthier defendants to be quickly released from jail with minimal consideration of their risk to public safety. Meanwhile those who cannot afford bail are suffering the short and long term consequences of being detained pretrial simply because they cannot afford to be released.

We offer three specific recommendations to broadly reform the bail system:

Recommendation 1: Increase the use of pretrial services and “own recognizance” release.

Reforms in other states have generally sought to reduce or eliminate the impact of the money bail system. One method involves the implementation of pretrial services systems to screen defendants for conditional or own recognizance release and ensure that the defendant appears for court hearings. These systems may include investigative staff who screen defendants to identify low and medium risk defendants suitable for release, or use of risk assessment software to predict whether a defendant is unlikely to appear, or might commit additional crimes upon release. Pretrial services systems may also function to assist defendants with appearing for hearing through either reminder call, or regular meetings with pretrial services staff.

Conditioning the defendant's release is another tool to avoid or minimize bail, and may be employed in conjunction with pretrial services programs. Some common release conditions include releasing the defendant to the custody of a responsible person or organization; restricting travel, associations, or place of domicile during release; prohibitions against possessing weapons; participation in drug screening or counseling programs; mandatory electronic/GPS monitoring; and other conditions designed to protect public safety and ensure appearance.

Some states have increased the availability of “own recognizance” release as a means to reduce the disparate impacts of money bail. For instance, both Illinois and Maryland statutes state a preference for release on own recognizance and contempt or criminal penalties, rather than financial forfeiture, as the preferred means of enforcing appearance by the defendant. Other states allow for the acceptance of unsecured appearance bonds executed by the defendant, in lieu of commercial surety bonds.

States and jurisdictions who have employed a mixed pretrial services/release conditions model have obtained good results and it is worth considering as a statewide policy in California. This could include direction on screening defendants for release eligibility, administering a validated

risk assessment tool, providing information to inform judges' release decisions, and providing supervision for defendants who are released through a pretrial services program. Even though California's 58 counties vary greatly in demographics and policies, California should provide statewide pretrial standards and risk-based algorithms so that defendants awaiting trial are detained based on evidence and not simply because they cannot afford to post bail.

Recommendation 2: Make bail hearings more available.

Misdemeanor defendants are entitled to release under their own recognizance, unless the magistrate makes a finding on the record pursuant to California Penal Code §1275 that own recognizance release will compromise public safety, or will not reasonably ensure appearance. Prior to appearance, a defendant will generally pay the amount listed in the bail schedule to obtain release, unless the jurisdiction has a magistrate or bail commissioner on duty to authorize own recognizance release. In the majority of cases, the defendant is arrested without a warrant and pays bail pursuant to the county-wide bail schedule. Most counties do not have magistrates or bail commissioners available to effect own recognizance release prior to the initial appearance mandated by California Penal Code §825. It is this class of pretrial defendants who are unable to afford the scheduled bail that are at issue in a suit for violation of 14th Amendment Equal Protection rights against the City and County of San Francisco.

Some states explicitly consider a defendant's financial circumstances when setting bail, however, this reform does not solve the problem of disparate treatment prior to initial appearance. Modifying California Penal Code §1275 to require consideration of defendant financial circumstances is perhaps the easiest "fix," but would not be effective until the defendant's initial appearance in most cases; most defendants would already have gone through the commercial bail system at this point. Moreover, there is tension between the county-wide bail schedules mandated by California statute, and consideration of a defendant's individual circumstances. California should provide counties with the resources they need for full-time magistrates or bail commissioners so they effectively utilize the bail hearing without spending two or more days in jail. This could also be accomplished by allowing commissioners or court clerks to set bail and release defendants to increase the pool of court officers that can conduct bail hearings, or by providing parameters for pretrial services staff to release defendants without a hearing.

Additionally, California should require that peace officers, jailors, or court personnel inform an arrestee of their rights to a bail hearing at the time of booking. The public needs forthright education on their rights to a hearing within 48 hours, where they may be released on own recognizance or have their bail reduced, because if they fully understand the process they may elect to wait for their bail hearing rather than immediately seek out a bail agent and pay the often high amounts on bail schedules.

Recommendation 3: Reexamine the bail schedules.

Bail schedules vary greatly by offense and by county. For example, the bail for petty theft with a prior conviction for petty theft is \$5,000 in Kern County, \$10,000 in Sacramento County, \$15,000 in Alameda County, and \$50,000 in San Bernardino County. Additionally, some counties combine the bail amounts for each charge, sometimes referred to as bail "stacking," while other counties only use the highest bail of the charges. For example, Santa Barbara County does not permit bail stacking, while Los Angeles county only does where the offenses area committed against separate victims or on separate dates; where separate sex acts are

committee on the same victims; or when offenses committed in a single occurrence are a separate class of crimes.

In California, Superior Court judges are charged with setting a county-wide bail schedule for all bailable felonies and all misdemeanors and infractions; the amount of bail specified in the schedule is to be based on the seriousness of the offense and include additional bail amounts for all aggravating or enhancing factors chargeable in the complaint.

California should provide a statewide bail schedule guideline or advisory that can be used by judges as part of their considerations when setting, reducing, or denying bail. Such a guideline could also include several tiers to account for the varied demographics and policies across California's counties. Defendants who are eligible for bail and charged with the same offense should be able to post similar bail amounts regardless of their location.

FINDING 2: CALIFORNIA SHOULD IMPROVE THE OVERSIGHT AND REGULATION OF THE BAIL INDUSTRY

A bail agent is a person permitted to solicit, negotiate, and effect undertakings of bail on behalf of any surety insurer. In the context of the cash bail industry, a "bail" means a bond posted as security for the release of a defendant, which is posted by a bail bond company to the court as a guarantee for an arrestee's appearance to all mandated court appearances. The bail bond fee is the sum of money or collateral, which is exchanged between the arrestee and the bail bond company to secure the bond. There are approximately 175,000 bail bonds written per year in California.

CDI regulates bail through our Licensing Services Branch, the Enforcement Branch, the Legal Division, and the Rate Regulation Branch. CDI's Licensing Services Division is responsible for licensing bail agents and CDI's Legal branch is responsible for issuing certificates of authority to the sureties. Currently, there are approximately 3,200 licensed bail agents and organizations and 17 sureties transacting bail in California. CDI's Enforcement Branch is charged with investigating and enforcing the activities of bail agents. Violation of the bail sections of the California Insurance Code and/or California Code of Regulations can be alleged as a felony or misdemeanor pursuant to California Insurance Code 1814. CDI's Enforcement Branch collaborates with CDI's Legal Division to prosecute administrative cases, and with District and City Attorneys to prosecute criminal cases. CDI's Rate Regulation Branch determines whether bail premium rates charged to consumers in California are fair (i.e. not excessive, inadequate or unfairly discriminatory).

Over the past few years the seriousness and number of bail complaints CDI has received have significantly increased. Subjects of recent bail complaints and enforcement actions include: receiving stolen property/contraband in lieu of premium collected; bribery and money laundering; gang conspiracy and/or criminal enterprise; kidnapping and false imprisonment for purposes of extortion; perjury and filing false documents; unlicensed activity/illegal solicitation; using jail inmates and jail staff as recruiters for bail transactions; theft or embezzlement of collateral or premium; creating of fake or false bail bonds; website misrepresentation and/or misdirection; dishonest advertising; and abuse of unmonitored attorney-client jail visiting rooms. The manner and volume of these complaints suggest that not only is the industry in need of reform but the general population is also at some risk of being victimized by unscrupulous bail agents.

The vision of CDI under Insurance Commissioner Dave Jones is “insurance protection for all Californians” and Commissioner Jones has focused his efforts on enhancing consumer protection, yet hardly ever is a person purchasing a bail bond referred to as a consumer. Despite the fact that bail consumers awaiting trial are innocent until proven guilty, many give them no more regard than convicted criminals. The process by which a person purchases a bail bond differs substantially from a person who is purchasing homeowners insurance, but the bail consumer population should also be afforded equal attentiveness, considering the vulnerable state one is in when they or their family and/or friends are purchasing bail. Although the bail system is in need of broad systemic reform, increases in consumer protection are necessary to safeguard bail consumers. Commissioner Jones believes the following twelve specific recommendations will not only improve the regulation and oversight of the bail industry as a whole, but will also strengthen protections for consumers.

Recommendation 1: Create a special bail enforcement fund within CDI.

Despite the bail product percentage of the insurance market being less than 2%, bail accounts for more than 10% of all CDI Enforcement Branch Reports of Suspected Violations (RSVs). The Department lacks the resources to fund a comprehensive bail enforcement program.

With more resources, CDI would be able to more fully investigate legitimate complaints against bail licensees. CDI would also be able to conduct, when warranted, further enforcement actions similar to the Santa Clara arrests that occurred in August of 2015. This enforcement action was the result of a multi-year investigation uncovering schemes by bail agents to scoop business away from competitors by rewarding jail inmates with money added to their jail accounts for providing information about newly booked individuals in the jails. The investigation, which included 31 bail agent arrests, 15 search warrants, approximately 100,000 digital recordings, and 50 witness and bail agent interviews, also revealed the illegal use of unlicensed individuals to transact bail and a bail agency knowingly employing a convicted felon as a bounty hunter—a violation of the Bail Fugitive Recovery Act. The Santa Clara District Attorney’s office and the Santa Clara Sheriff’s office have since reported that due to this enforcement action, illegal activity in Santa Clara jails has significantly diminished.

The bail fund should be furnished by an assessment on the bail industry similar to the other effective funding models within CDI with proven performance in the realms of life insurance and annuities, auto insurance, health and disability insurance, workers compensation, and property and casualty insurance. The first special fund was created in 1988 to not only address a steady increase in complaints and enforcement cases but to enable District Attorneys to devote specific resources to their prosecution. For example, as a result of collaborative effort under the Life and Annuity Consumer Protection Fund, numerous licensed agents were prosecuted and convicted for theft, financial elder abuse, forgery, and identity theft.

California is far from the only state that struggles to regulate the bail industry; many states use assessments to better fund the regulation of the bail system. For example, in Alabama, there is a filing fee of \$35 on each bond executed paid by the bondsman, surety, guaranty, or person signing as surety for the undertaking of bail; in Connecticut there is an annual fee of \$450 on each bail agent; in Mississippi there is a fee equal to 2% of the face value of each bond or \$20, whichever is greater, and Arkansas requires a \$10 per bond fee.

Effective bail enforcement by CDI and City and District Attorneys produces numerous benefits to the bail bond industry and consumers who purchase bail products. Consumers are protected from predatory tactics by unscrupulous bail agents, while the bail industry benefits from

improved consumer confidence and a fairer playing field for bail agents transacting business lawfully. Funds are not only needed to create an aggressive prevention, investigation, and prosecution program dedicated to eliminating illegal bail practices, but also to increase outreach and educate on bail laws in California.

Recommendation 2: Require bounty hunters to be licensed.

Bounty hunters, also known as bail fugitive recovery persons, earn their living by tracking down bail fugitives. If an accused person out on bail fails to appear at his or her court date, the bail agent who posted the bond for the accused may contract with a bounty hunter to retrieve the person.

Of the forty-two states that allow bounty hunting, there are twenty-one that require a bounty hunter license. In California, oversight of these activities is limited to certain education, notice, and conduct requirements outlined in California Penal Code §1299-1299.12.

CDI is tasked with investigating bail fugitive complaints despite the fact that bounty hunters are not licensed and do not pay any fees to CDI. According to data provided by the sureties, there were approximately 37,075 forfeitures in 2013, which represents a significant fugitive workload. Bounty hunters who are not already licensed bail agents in California should be required to obtain a license from CDI, which would include the passage of a California licensing examination and passage of a fingerprint-based background check done by both the California Department of Justice and the Federal Bureau of Investigation.

Recommendation 3: Require bail agents and sureties to obtain arrest or bench warrants prior to surrendering a defendant to jail.

Bail Agents and sureties are frequently surrendering defendants back to custody without cause and failing to return premium as required. The problem is primarily a result of the bail agent and surety failing to adequately underwrite and charge the appropriate premium for a bail transaction. When payments are missed by the defendant, the bail agent/surety seeks out the defendant – often using force to return the defendant to jail. An arrest warrant should be required prior to returning a defendant to jail.

An arrest warrant obtained with prior judicial approval provides the legal necessity for returning an arrestee to jail. It Documents the bail agent and sureties intentions prior to arrest and provides local law enforcement with a legal basis for the authority of bail agents and sureties to revoke a bail bond and surrender the arrestee back to jail.

The warrant obtained with prior judicial approval is consistent with existing law and other states, and would prevent unlawful entry into third party homes and/or businesses by bail agents and their contracted bounty hunters. It would prevent jail overcrowding, unnecessary confrontation with third parties and clarity to law enforcement and first responders.

Recommendation 4: Require bail insurers to establish a compliance unit to reduce fraud and misconduct.

One of the issues that CDI has encountered with bail investigations is the lack of information they receive from surety insurers, basically causing all bail investigations to start at square one. In other forms of insurance, subject to the Insurance Frauds Prevention Act (California Insurance Code 1879-1879.8), cases are often already partially identified or worked up by

insurers and then provided to CDI. There should be a similar model for sureties who transact bail in California by requiring insurers to establish a “compliance unit” with dedicated staff to conduct bail agent background checks, train and educate staff regarding compliance with statutes and regulations, implement safeguards to prevent bail violations, and submit all suspected bail violations to CDI.

Recommendation 5: Increase the amount of a bail agent’s required surety bond prior to licensure.

California Insurance Code 1802 requires a bail agent applicant to show proof of a \$1,000 bond issued by an admitted surety in order to receive a license from CDI. This statute has not been amended since 1965.

Other states require a bail agent applicant to obtain a bond with a higher amount prior to licensure. For example, New York requires a \$5,000 bond; Alabama requires a \$25,000 bond; and Arizona and Washington require a \$10,000 bond. Other types of insurance licenses in California also require the posting of bonds with a higher amount prior to licensure. For example, property broker-agent licenses and casualty broker-agent licenses require a \$10,000 bond and public adjusters are required to obtain a \$20,000 bond.

As mentioned above, CDI receives frequent complaints from consumers regarding the conduct of bail agents. The bonds discussed above allow consumers who are victims of unscrupulous bail licensees an avenue to be compensated for harms they suffer. The amount of the bond should be sufficient for a consumer to be made whole.

Bail schedules vary greatly by offense and by county. In Sacramento County, the bail for a domestic violence charge is \$5,000, the bail for second degree burglary is \$10,000, the bail for battery with serious bodily injury is \$50,000, and the bail for carjacking is \$100,000. On average, a person is paying a bail agent 10% or less of the bail amount as premium, but they also sign over collateral, which can be a house, car, jewelry, etc. A bail agent applicant should be required to obtain a higher surety bond to better align with the losses a consumer may experience in a contractual relationship with bail agent.

Recommendation 6: Require a disclosure on all bail agent contracts.

In general, consumers do not realize that bail is an insurance product, let alone that it is regulated by CDI. When a consumer is signing a contract with the bail agent, they should know that they have the right to contact CDI if they have any questions or concerns. The contract should contain CDI’s address, telephone number, and website address in large, boldface type, just like the other types of insurance regulated by CDI. In addition, the disclosure should also include the contact information of the surety insurer that is writing the bail bond, in case any questions or concerns need to be addressed to the surety. Having this important information available to a consumer before they sign the contract will provide an essential consumer protection.

Recommendation 7: Clarify the bail term limits.

Most, but not all, bail bond companies charge a renewal premium if the defendant’s case has not been resolved within 12 months. CDI receives complaints about this practice. Bail premium is earned at the inception of the contract, regardless of the expected duration of the criminal

proceedings. Bail agents should not be allowed to charge premium renewals, or any additional premium, unless a new bond amount is ordered by the court, or new charges are filed.

Recommendation 8: Bail licensees should pay for their own CDI examination costs.

Bail licensees are the only members of CDI's regulated public exempted from paying their own field exam costs. CDI employs field examiners with the necessary skill to review bail licensee records and determine whether they meet all legal requirements, as well as determine whether the bail licensee is engaged in fraudulent transactions. Not only do the field examiners document alleged violations of law for possible enforcement actions, but they also work with licensees to implement corrective measures. The corrections can include the implementation of new guidelines and procedures that serve to protect current and future policyholders and claimants, as well as additional payments to consumers for previously underpaid claims or overcharged premium dollars.

The Department has successfully obtained license revocations based in large part on deficient record-keeping by bail licensees. However, "paper" cases against bail licensees are rare, because the current statute prevents recovery of bail licensee exam costs incurred by field examiners. Using evidence obtained in bail records as a basis for administrative action against bail licensees will enable CDI to take action against violators more expeditiously and efficiently while also providing evidence and information which law enforcement agencies and District Attorneys may use in cases against bail agents whose illegal activities harm consumers.

Recommendation 9: Enhance bail reporting requirements for relevant government entities.

There is a current lack of accurate and comprehensive statewide statistical information on the bail system. CDI does not receive notices relating to bail business transactions as a matter of course, instead relying on time-consuming and costly investigations to find relevant records. Transparency would significantly increase by requiring every surety insurer transacting bail in California to annually report to the Commissioner, the Judicial Council, and the Attorney General certain information regarding their business operations. This could include: the number of bail bonds written, the total face value of the bail bonds, the total gross and net premium, the identification of bail agents appointed by the sureties, notice of any disciplinary actions taken by the surety against an appointed bail agent, notice of forfeitures, and notice of surrenders or arrests. Implementing these reporting requirements will assist CDI in the regulation of bail licensees.

Recommendation 10: Amend the summary judgement timeframes for appeals.

CDI has received complaints from district attorney offices regarding surety companies who are no longer paying county claims on forfeited bail bonds, due to the two-year statute of limitations imposed by the California Penal Code. These sureties will file an appeal of their forfeiture, a process which can take many years, then claim that they are no longer obligated to pay after two-years, even if they lose their appeal. California Penal Code 1306e should be amended to stop the two-year clock during the course of any appeals process.

Recommendation 11: Require bail agents to return premium when charges are dropped.

Bail bond premiums and collateral should be returned if charges are never filed by a District Attorney and there was no failure to appear prior to the charges being dropped. This potential

concept is prompted by numerous stories of consumers who enter into bail bond payment plans and are left paying for years after charges are dropped (often at maximum interest rates).

Recommendation 12: Authorize the creation of so-called “Charitable Bond Organizations” (CBOs) in California.

A number of CBOs, including the Chicago Charitable Bail Fund and the Bronx Freedom Fund, have been created across the country. By the numbers, CBOs have been successful, both in securing release for more defendants and in getting their capital returned once the defendants appear for hearing. In general, these are 501(c)(3)-chartered organizations operating as revolving funds, which provide cash to secure a defendant’s pretrial release. CBOs are not licensed like traditional bail agencies and do not operate as a surety. The bail statutes should be clarified to allow for the operation of CBOs in California, which would provide more defendants access to the bail system and could potentially reduce the cost of cash bail.

CONCLUSION

The current bail system in California needs to be fundamentally reassessed to better serve the purpose of promoting public safety and ensuring court appearances. California should move toward a system based on evidence and risk through pretrial services and release conditions and improve regulation of the bail industry.

CDI applauds the Brown Administration, the Judicial Council of California, key members of the Legislature and other stakeholders for their interest in working on these complex and difficult issues and is happy to provide whatever assistance we can to help find a workable solution to reform the bail system in California.