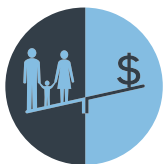


DO THE MATH:

Money Bail Doesn't Add Up for San Francisco



THE FINANCIAL
JUSTICE PROJECT
SAN FRANCISCO

OFFICE OF THE TREASURER & TAX COLLECTOR
CITY AND COUNTY OF SAN FRANCISCO

June 2017



As the Treasurer for City and County of San Francisco, I'm the money guy. I'm not a criminal justice expert. But I do consider myself a Treasurer for all San Franciscans. That is what led me ten years ago to start the Office of Financial Empowerment to equip poor and low-income San Franciscans with the knowledge, skills and access they need to achieve greater financial security. For more than 10 years, I've worked to reduce reliance on check cashers and payday lenders, and ensure every San Franciscan has access to safe and affordable financial products.

As the City and County's official debt collector, I also know that frequently, individuals we collect from do not have the ability to pay fines and fees. A growing number of government programs levy fines and fees on their residents, fines that are not adjusted for income, and are out of reach for low-income people. That's why my office is the first in the nation to launch a Financial Justice Project, to assess and reform how fines and fees impact our city's most vulnerable residents. These are the same people we focus on in our financial empowerment work—struggling San Franciscans.

It is essential that government holds people accountable, and that there are consequences when people break rules or laws. But we need to do so in a way that is fair and just, and doesn't dig struggling San Franciscans into even deeper holes. Government should be an equalizer of opportunity, not another driver of inequality.

After learning more about the money bail system, I am concerned that money bail- and particularly its reliance on predatory private bail bond companies- is one of these drivers of inequality. I am concerned that bail creates a two-tiered system of justice. One for the rich, and one for the poor. I'm concerned that money bail strips money and resources from people and communities that cannot afford to lose it.

I want to be clear. I don't believe we should reduce accountability for crimes. Like my colleagues here throughout the City and County, I firmly believe that when City and County resources are spent to keep people in jail, the decision should be based on the risk they pose to our communities, not on the money they have in their bank accounts.

This paper examines our local system of bail; its shortcomings, and puts forward a range of short, medium, and long-term reforms. These recommendations grow out the work of the San Francisco Fines and Fees Task Force, that was convened by the Board of Supervisors to assess and reform how fines, fees, tickets and financial penalties impact low income San Franciscans and communities of color. Staff from The Financial Justice Project coordinates the Fines and Fees Task Force and organized a consensus building discussion to conduct this analysis and develop these recommendations, in collaboration with individuals from many city and county departments and community organizations. I want to thank all of our colleagues who contributed to this paper.

We hope this paper advances the dialogue and momentum needed to reform our system of bail in San Francisco and California.

A handwritten signature in black ink, appearing to read "José Cisneros".

José Cisneros

Do The Math: Money bail doesn't add up for San Francisco

Bail posted in San Francisco averaged \$56,000 in 2016. San Francisco bail is among the state's most expensive.



Money paid to a private bail company - up to 10% of the bail amount - is not refundable, even when the person shows up for trial or the charges are dropped.

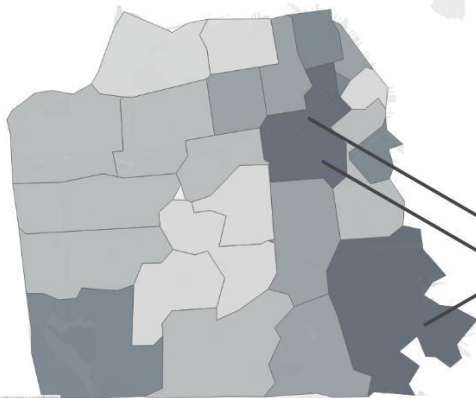


Bail hits women hard.

Sisters, mothers, wives, and grandmothers are often the ones to bail people out. If they cannot pay the required bail payment, they are on the hook to pay it over time.



Poverty in San Francisco



Bail strips approximately \$10-15 million a year from San Franciscans in nonrefundable fees.

Low-income neighborhoods and communities of color are the hardest hit:

1. Bayview
2. Tenderloin
3. South of Market

Poverty Rate
Low-High

Complaints against the California bail bond industry have risen 300% in recent years.



Complaints include scams, bribery, fraud, perjury, extortion, kidnapping, and more.



The CA Department of Insurance and Santa Clara District Attorney conducted an investigation and arrested 31 bail agents on felony charges, including the illegal practice of colluding with jail inmates for new business.



Bail creates a two-tiered system of justice. People with wealth can purchase their freedom, while people without wealth stay behind bars.

Sources: Public Policy Institute of CA report, "Assessing the Impact of Bail on California's Jail Population" (June 2013), Analysis of SF Sheriff's Office data, Analysis of CA Dept. of Insurance data, American Community Survey 2011-2015, SF Fines and Fees Task Force: Initial Findings and Recommendations report (May 2017), CA Dept of Insurance press release "Update: South Bay bail agents targeted in law enforcement sweep (Sept 2015).

Do the Math: Money Bail Doesn't Add Up for San Francisco



THE FINANCIAL
JUSTICE PROJECT
S A N F R A N C I S C O

EXECUTIVE SUMMARY

In November of 2016, San Francisco City Attorney Dennis Herrera announced that our system of pre-arraignment bail is unconstitutional and that he would not defend it in a lawsuit that was brought against the City and County of San Francisco by legal advocates. Herrera stated:

“Bail creates a two-tiered system: one for those with money and another for those without. It doesn't make anybody safer. It's not right, and it's not in keeping with our Constitution. It's time for it to stop. To echo U.S. Attorney General Loretta Lynch, we need to ensure that in the United States there is no price tag on justice.”

San Francisco City and County leaders are coming together around two common goals: 1) To reform our local system of bail to ensure decisions to keep someone in jail are based on the risk they pose to the community, not the amount of money in their bank account 2) To ensure all local bail reform efforts enhance public safety, increase accountability, and advance justice and equity.

San Francisco has a history of leadership in this space. The City and County has operated supervised pretrial release programs since 1975, and the Sheriff has pioneered pretrial alternatives that save taxpayer money and ensure public safety. District Attorney George Gascón was instrumental in securing a new risk-assessment tool that shifts our criminal justice system away from the money bail system, and Public Defender Jeff Adachi has created internal departments dedicated to support defendants who cannot afford to post bail.

This paper examines our local system of bail, its shortcomings, and puts forward a range of short, medium, and long-term reforms. These recommendations grew out of the work of the San Francisco Fines and Fees Task Force, which was convened by the Board of Supervisors to assess and reform how fines, fees, tickets and financial penalties impact low-income San Franciscans and communities of color. The Financial Justice Project leads the Fines and Fees Task Force and coordinated a consensus building discussion to conduct this analysis and develop these recommendations, in collaboration with individuals from many city and county departments and community organizations. The analysis and recommendations put forward in this paper were developed in partnership with the San Francisco Sheriff, City Attorney, District Attorney and Public Defender.

KEY CONCLUSIONS:

Bail is expensive and many San Franciscans cannot afford it. Median felony bail in California is estimated to be \$50,000, more than five times the national average. San Francisco's bail schedule is estimated to be in the top highest quartile in the state.

Money bail often leads to the detention of the poorest defendants rather than the highest risk defendants. Defendants with access to wealth and capital may purchase their freedom, despite a potentially higher risk level, while those with no resources must wait in jail until their trial.

Nonrefundable bail fees strip wealth from low-income neighborhoods and communities of color. Over 99% of people who post bail in San Francisco use private bail bond companies. These agencies charge up to 10% of the total bail amount in nonrefundable fees. For a \$50,000 bond, that is \$5,000.

This fee is never refunded, even if the defendant shows up for every court date, is found not guilty, or has their charges dropped the next day. San Franciscans pay up to \$10-\$15 million per year in nonrefundable fees to bail bond agencies. These fees are largely paid by residents of low-income neighborhoods and communities of color.

Commercial bail bond companies receive little local oversight. Statewide, complaints against bail bond agents have increased by 300% over the last five years. While commercial bail bond companies currently play a central role in the criminal justice system, data on their success rates, including court appearance and re-arrest rates for the defendants they serve, are not collected or published in San Francisco. Information about payment plan structures, payment amounts, and debt collection methods are not publicly available. The procedures required to collect money owed by bail agents after someone fails to appear in court are burdensome and costly, and can result in the bail agents avoiding payment.

Money bail is a bad fiscal deal for San Francisco taxpayers.

Pretrial detention is costly and inefficient when alternative options could ensure public safety and appearance in court. In addition to direct government expenditures, defendants in pretrial detention face significant personal costs such as lost income, housing, and custody of children

San Francisco is a leader in pioneering community supervision and risk assessment programs that keep San Franciscans safe and save taxpayers money.

San Francisco has been a leader in supervised pretrial release services for decades.¹ The San Francisco Sheriff's Department launched a nonprofit Pretrial Diversion Project in 1975. In 2016, the San Francisco Pretrial Diversion Project screened over 8,000 people and secured the release for more than 1,500 defendants waiting for trial. In total, this saved the City and County an estimated 152,000 jail bed days, where the City and County would have had to pay for the defendant's detention. Furthermore, The Courts, District Attorney, and other agencies are collaborating to use data driven risk assessment tools to ensure the decision to release, supervise, or detain defendants is based on their risk of committing additional crimes or skipping court.

While San Francisco is a leader in many aspects of pretrial reform, there is still more work to be done. In San Francisco, approximately 2,500-3,000 commercial bail bonds are posted every year.

RECOMMENDATIONS:

These recommendations are explained in greater detail in the paper:

Short-term recommendations:

1. Increase the use of cost-effective alternatives to incarceration. Increasing the use of alternatives can include supporting and investing in the Pretrial Diversion Project, clearly posting and distributing information about alternatives, and supporting other existing programs such as the Public Defender's Bail Unit.
2. Increase oversight of the bail bond industry. Increasing oversight will increase transparency, curb abuse, and help recover costs owed to the City and County of San Francisco. San Francisco can require local data collection from bail bond agencies to better understand the effectiveness of money bail, as well as payment and debt collection mechanisms.

¹ Pretrial Services are services that allow the defendant to be released, with conditions, while waiting for trial. Conditions could include drug and alcohol treatment, intensive case management, or electronic monitoring.

3. Minimize time spent waiting to see a judge. Approximately half of defendants are not eligible for release prior to arraignment. While arrestees must be brought before a judge within 48 hours, this timeline excludes weekends and holidays. As a result, defendants can wait up to five days prior to seeing a judge, and may face negative consequences such as job loss, loss of custody of children, and more.

Medium-term Recommendations:

4. Lower the cost and financial burden of bail in San Francisco. Median felony bail in California is \$50,000; more than five times the national average. San Francisco's bail schedule is in the top quartile in the state. Possible solutions could include exploring the creation of a revolving bail fund, which would be available to help defendants in need. Further exploration is needed to determine if this model can be adopted to fit San Francisco's unique circumstances. The Superior Courts in San Francisco and across California could also consider basing bail on ability to pay, or other strategies to alleviate the financial burden on low income San Franciscans.

Long Term Recommendations

5. Advocate for statewide reform. Much of local bail regulation is determined at the statewide level. The City and County of San Francisco could engage in State Legislative Advocacy to recommend statewide solutions, including supporting the California Money Bail Reform Act (SB 10), which would mandate counties to use risk assessment tools when considering pretrial release, eliminate fixed-rate bail schedules, and allow partial bail payments to be made to the court, which would be refunded after the defendant appears in court.

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- Santa Clara District Attorney's Office
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- California Department of Insurance
- New America, California
- Tanea Lunsford
- Public Policy Institute of California
- Western Center on Law and Poverty

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I. INTRODUCTION

In November of 2016, San Francisco City Attorney Dennis Herrera announced that our system of pre-arraignment bail is unconstitutional and that he would not defend it in a lawsuit that was brought against the City and County of San Francisco by legal advocates. Herrera stated:

“Bail creates a two-tiered system: one for those with money and another for those without. It doesn’t make anybody safer. It’s not right, and it’s not in keeping with our Constitution. It’s time for it to stop. To echo U.S. Attorney General Loretta Lynch, we need to ensure that in the United States there is no price tag on justice.”

San Francisco City and County leaders are coming together around two common goals: 1) To reform our local system of bail to ensure decisions to keep someone in jail are based on the risk they pose to the community, not the amount of money in their bank account 2) To ensure all local bail reform efforts enhance public safety, increase accountability, and advance justice and equity.

San Francisco has a history of leadership in this space. The City and County has operated supervised pretrial release programs since 1975, and the Sheriff has pioneered pretrial alternatives that save taxpayer money and ensure public safety. District Attorney George Gascón was instrumental in securing a new risk-assessment tool that shifts our criminal justice system away from the money bail system, and Public Defender Jeff Adachi has created internal departments dedicated to support defendants who cannot afford to post bail.

This paper examines our local system of bail, its shortcomings, and puts forward a range of short, medium, and long-term reforms. These recommendations grow out the work of the San Francisco Fines and Fees Task Force, that was convened by the Board of Supervisors to assess and reform how fines, fees, tickets and financial penalties impact low income San Franciscans and communities of color. The Financial Justice Project leads the Fines and Fees Task Force and coordinated a consensus building discussion to conduct this analysis and develop these recommendations. The recommendations were developed in collaboration with individuals from many city and county departments and community organizations.

II. HOW BAIL WORKS IN SAN FRANCISCO

After an individual is arrested, there are typically five potential courses of action. For nonviolent misdemeanors, the defendant is typically cited and released, and may not be brought to the county jail at all. For those arrested on felony charges and some misdemeanors, they are booked into county jail. Within two business days (excluding weekends and holidays), their case is presented to the San Francisco District Attorney's Office for its review, and they decide whether or not to charge the case. Defendants who are charged within this time will then face criminal prosecution. While they are waiting for their case to resolve, there are four potential courses of action:

1. The Superior Court can allow the defendant to be released on their own recognizance (known as O.R.) if determined to be low flight risk;
2. The Superior Court can recommend conditional release, such as agreement to comply with an anger management, no contact orders, or drug and alcohol treatment;
3. The Superior Court can deny bail due to concerns for public safety; or
4. The Superior Court can set a monetary bail amount, guided by a local fee schedule. The defendant would need to pay that amount to the court to be released from jail while they wait for trial.

If the defendant does not post bail, or secure some other form of release, defendants must wait in jail until their case is adjudicated. For serious crimes, this can take years.

Bail is typically paid in two main ways:¹

1. **Surety Bonds** are paid using a commercial bail bond agent. More than 99% of bonds posted in San Francisco are surety bonds.² If the defendant cannot pay the entire bail amount directly to the court, they, their friends or their family may pay a percentage of their bail to a private, commercial bail bond agent. The agent in turn guarantees the defendant's appearance in court, or promises to pay the courts the entirety of the bond if the defendant fails to appear. General practice is for bail bond agencies to charge 10 percent of the total bond amount (i.e. \$5,000 on a \$50,000 bond). This fee is nonrefundable, and is not returned even if the defendant shows up at every court date, is found not guilty, or has their charges dropped within the first 48 hours. Typically, the bail bond is cosigned and copaid by the friends and family of the defendant.
2. **Cash Bonds** are paid directly to the court. Less than 1% of bonds posted in San Francisco are bonds.³ If the defendant has the entire bail bond amount, defendants can pay the entirety of their cash bond to the court. If the defendant appears in court, cash bonds are refunded minus administrative fees. Cash bail is a direct contract between the court and the defendant.

Bail can be posted at any time after being booked into county jail, or after the first arraignment (the first time the defendant goes before a judge). Before the arraignment, bail is set using a fixed fee schedule created by the Superior Court, which is based on the severity of the crime. The same fee schedule is used for all income and wealth demographics. At the arraignment, the judge may alter the bail amount based on prior convictions, public safety, and other factors.

While the money bail system plays a critical role in San Francisco's criminal justice system, it is not always well-understood by the public. Below are a list of myths and facts about money bail.

1 For a list of key terms, see Appendix, Figure 1

2 Analysis conducted on bail bonds posted between 1/1/16-8/31/16, provided by the San Francisco Sheriff's Department

3 Ibid

Money Bail: Myths v. Facts	
MYTH	FACT
X Bail Bonds are like a security deposit; people get their money back after they show up in court	✓ 99% of bonds are posted by paying nonrefundable fees (i.e., \$5,000 on a \$50,000 bond) which is never returned
X The people who are charged with a crime are the only ones who pay bail	✓ Many people who pay bail are the friends and families of the defendant; often, the wives, mothers, sisters and grandmothers
X Only people who are convicted of a crime pay bail	✓ Many defendants who pay bail have their charges dropped, dismissed, or are found not guilty
X Bail agents decide who to offer bail based on the risk that person poses to the community	✓ Most bail agents do not utilize risk assessments when deciding when to offer bail
X Money bail increases public safety	✓ People released on under supervised pretrial release programs often receive more supervision than defendants who are released by paying money bail.
X Money bail is the most effective tool to get people to show up in court	✓ Court appearance rates for those out on bail are not known or published in San Francisco

San Francisco has been a pioneer in Supervised Pretrial Release

San Francisco has been a leader in pretrial diversion and supervised pretrial release programs for decades. Compared to other counties, relatively few people charged with misdemeanors are booked into San Francisco’s county jail, and San Francisco has operated some sort of supervised pretrial release since 1975. On any given day, approximately 1,000-1,500 individuals under the supervision of the San Francisco Sheriff’s Department are under some sort of supervised release program, such as the Supervised Pretrial Release Program and Electronic Monitoring, rather than in jail.⁴

Last April, the Public Safety Assessment (PSA) tool launched in San Francisco through a memorandum of understanding between the Laura and John Arnold Foundation, the Sheriff’s Department, and the Superior Court, establishing a new risk-based pretrial supervision model for the city. District Attorney George Gascón was instrumental in securing the Foundation’s PSA tool for the City & County. The PSA tool is implemented by a nonprofit, the San Francisco Pretrial Diversion Project (SFPDP), which operates under the purview of the Sheriff’s Department. The SFPDP completes a Public Safety Assessment (PSA) on all people booked into San Francisco’s county jail. The PSA determines an individual’s risk level by looking at nine statistically significant factors that predict pretrial success or failure (such as whether the person has a prior conviction, has been previously

4 Sheriff’s Jail Count as of November, 2016

sentenced to incarceration, the person's age, and whether the current charges are violent). Based on the scores generated by the PSA, a release recommendation is made to the Superior Court. The recommendations include release with no active supervision, minimum supervision, or assertive case management; or release not recommended.⁵ The San Francisco Superior Court reviews the completed risk assessment and may follow or disregard the risk assessment's release recommendation, or set bail pursuant to the bail schedule. Without the San Francisco Pretrial Diversion Project, the San Francisco jail population would almost be double the current daily average of 1,250.⁶

Thousands of San Franciscans pay millions of dollars a year in nonrefundable bail fees.

Approximately 18,000-21,000 individuals are booked into San Francisco's County jail in any given year.

In 2016, 2,652 people posted bail, and posted a total of over \$149 million in bonds (a total of \$168 million in bonds were posted in 2015). The average bail amount posted in San Francisco was over \$56,000, with the largest concentration of bonds between \$10,000-\$50,000.⁷ Of those that posted bail, more than 99% used a commercial surety bonds, and paid a nonrefundable deposit to secure their release. Assuming bond payments of up to ten percent of the total bond amount, defendants and their loved ones paid up to \$10-15 million a year in nonrefundable bail fees.⁸

According to a [report](#) by the Public Policy Institute of California, median felony bail in California is \$50,000; more than five times higher than the rest of the country. An [analysis](#) of the most frequent charges show that San Francisco's bail schedule is within the top quartile in the state.

San Francisco's System of Bail by the Numbers:

- Approximately **85%** of San Francisco's county jail population is pretrial, and have not yet been convicted of the crime(s) for which they are charged
- Of these, **40-50%** could be released if they could afford to pay their bail. In the most recent point-in-time count, there were **377** defendants with bail less than \$500,000.
- A total of **2,652** people posted bail in San Francisco in 2016, approximately 7 people per day
- The average bail posted was over **\$56,000**; the median bail posted was **\$43,000**
- **99%** of people who post bail pay a non-refundable fee to a commercial bail bond agent
- **10%** is the typical amount bail bond agents can charge in nonrefundable fees (i.e. \$5,000 on a \$50,000 bond)
- Up to **\$10-15 million** in nonrefundable bail fees are paid by San Franciscans each year

Figure 1 Sources: State of California Board of State and Community Corrections, Work Group to Re-envision the Jail Replacement Project Final Report jail point-in-time count as of August 23, 2016, Analysis of bonds posted 1/1/2016-12/31/2016, provided by San Francisco Sheriff's Department.

5 Based on their charges, over half of the defendants booked into the San Francisco County jail were not eligible to be released before their arraignment using the PSA because of mandatory charges, detainers, holds or citations.

6 San Francisco Sheriff's Newsletter, April-May 2017, Issue 51-52

7 Analysis of bail bonds posted Jan.1 2016- Aug. 31, 2016. Data provided by the San Francisco Sheriff's Department.

8 Analysis conducted on bail bonds posted between 1/1/15-12/31/16, provided by the San Francisco Sheriff's Department. Assumes nonrefundable payments up to 10% of the total bond amounts.

Bail Bonds Posted by Amount, 2014-2016

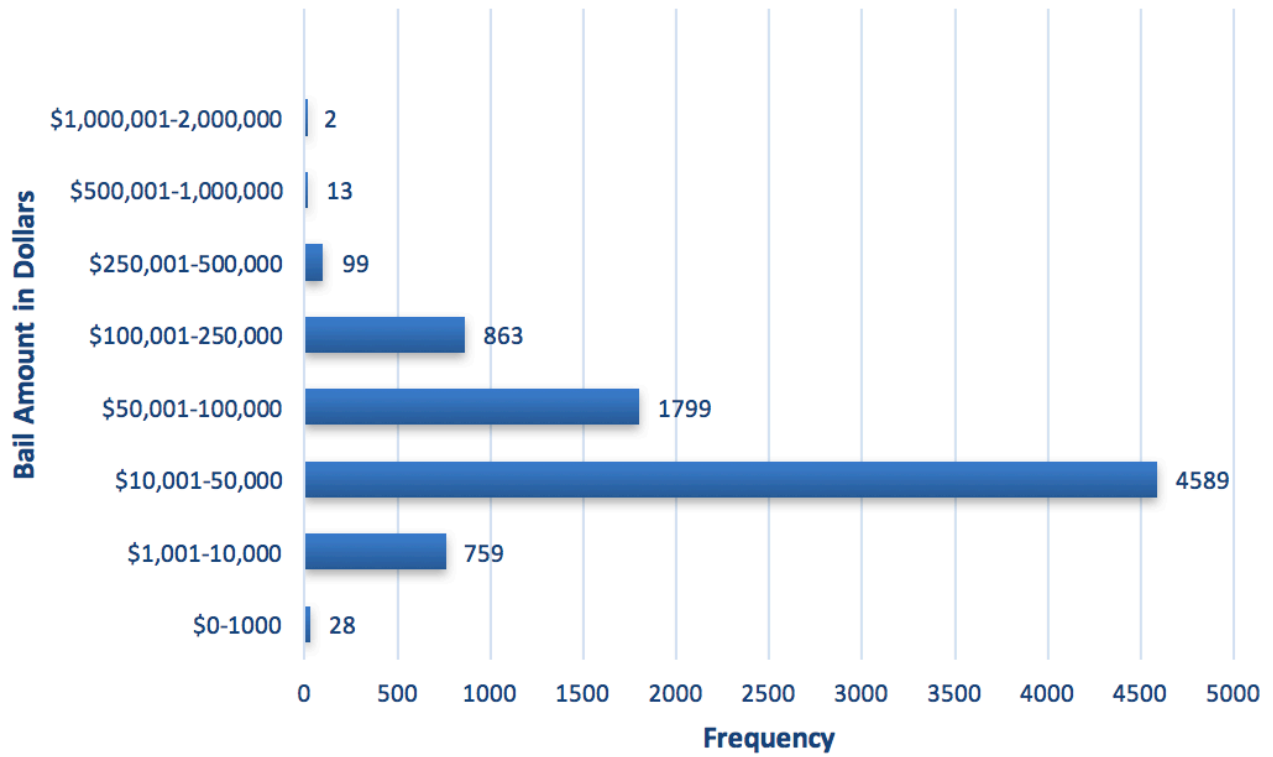


Figure 2: San Francisco Bail Bonds Posted by Amount, Jan. 1, 2014- Dec. 31, 2016. Source: San Francisco Sheriff's Dept.

III. THE PROBLEMS WITH MONEY BAIL

Bail leads to the poorest staying in jail, rather than the highest risk

The core critique of monetary bail is that it keeps individuals jailed simply because they lack the financial means to post bail. Although an upper-middle class person and a low-income person may be arrested and charged with the same offense, the upper-middle class person is much more likely to be able to post a bond, even if they are higher risk, and might even be able to secure a release on the same day. As it is currently structured, the bail schedule does not factor in a defendant's ability to pay; the same fee schedule is assessed across all income and wealth demographics.

The median nonrefundable bail fee needed for release is \$5,000, yet a recent [survey](#) by the Federal Reserve found that 46% of American adults have no emergency savings, and could not come up with \$400 to cover an emergency expense without selling something or borrowing money. As a result, for most Americans, the choice is either to stay in custody or to drain family and community resources to come up with the deposit, which will not be returned even if charges are dropped. According to the [PPIC](#), money bail alternatives, such as risk assessment tools, may be useful in determining whether individuals currently released through posting bail may actually pose a threat to public safety.

Bail strips wealth from low-income communities and communities of color

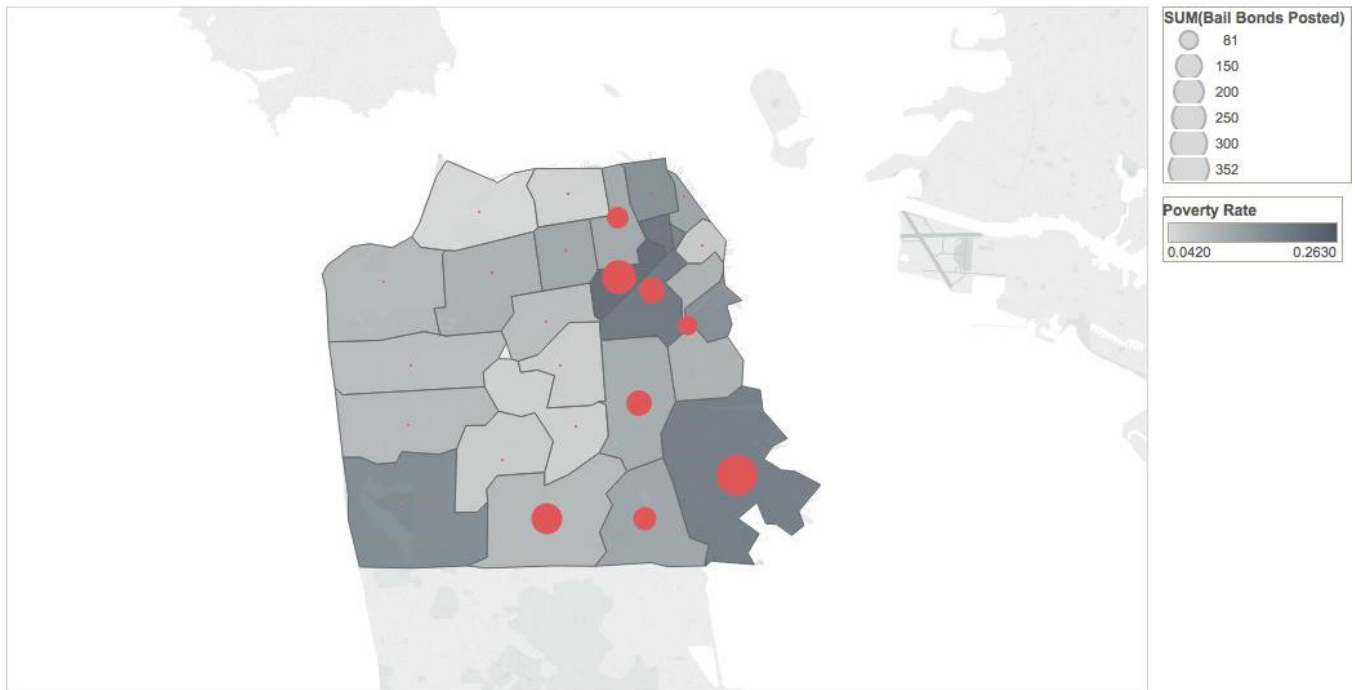
While many people assume bail acts as a security deposit and is returned when a defendant appears in court, it is most frequently obtained by paying a sizable nonrefundable fee to a private bail bond company. In data collected by the California Department of Insurance, the agency which regulates the bail bond industry, sureties reported that bail agencies in the state collected an average of over \$308 million in nonrefundable bail bonds per year.⁹ These nonrefundable fees average approximately \$8 per capita per year across the state.¹⁰ Locally in San Francisco, bail agencies collect as much as \$10-15 million in nonrefundable bail bond fees per year,¹¹ equivalent to up to \$17 per capita per year.¹²

Data is not collected or reported on who cosigns and repays bail bond loans on behalf of defendants, or the payment plan structures that are used to pay the initial ten percent. Anecdotal data, supported by [research](#) on the impact of the criminal justice fines and fees, show that most of these fees fall to women, who are posting bail on behalf of their loved ones.

Low-income communities and people of color disproportionately pay these fees. While many bonds posted have no listed zip code, annualized estimates based on data received from Jan. 1, 2016- August 31st, 2016 suggest the follow zip codes are most impacted by bail:¹³

-
- 9 4 of the 17 sureties were unable to report this data. See Appendix Figure 1 for additional information.
- 10 Calculation: nonrefundable bail fees (\$308 million) divided by California population estimate (39.25 million as of 2016, US Census Bureau).
- 11 Calculation: \$149 million in bonds posted in San Francisco in 2016 (source: San Francisco Sheriff's Department.) An estimate of \$10-15 million in nonrefundable fees assumes 7-10 percent fees charged by bail agents.
- 12 Estimated nonrefundable bail fees divided by San Francisco population estimates, 2016 American Community Survey (870,887).
- 13 Analysis conducted on bail bonds posted between 1/1/16-8/31/16, assuming 10% deposits are paid on all bail.

- **Zip Code 94124. Bayview/Hunters Point** residents post over 500 bonds per year. Nonrefundable bail fees are estimated to total approximately \$1-2 million per year.
- **Zip Code 94102. The Tenderloin/Civic Center** residents post over 350 bonds per year. Nonrefundable bail fees are estimated to total between \$1-1.5 million per year.
- **Zip Code 94112. Excelsior/Ingleside** residents post approximately 300 bonds per year. Nonrefundable bail fees are estimated to total between \$750,000-1.2 million per year.
- **Zip Code 94110. Mission/Bernal Heights** residents post approximately 200 bonds per year. Nonrefundable bail fees are estimated to total between \$500-\$850,000 per year



Map based on Longitude (generated) and Latitude (generated) and Latitude (generated). Details are shown for Zipcode. For pane Latitude (generated): Color shows sum of Poverty Rate. For pane Latitude (generated) (2): Size shows sum of Bail Bonds Posted.

Figure 3: San Francisco Bail Bonds Posted by Zip Code, 1/1/16-8/31/16
Source: American Community Survey, San Francisco Sheriff’s Department

Because people of color are over-represented relative to their population size in our criminal justice system, they are disproportionately impacted by current bail practices. Nationally, a recent [study](#) found that judicial discretion leads to systematically higher levels of bail for African American defendants relative to white defendants, even when controlling for offense type and defendant characteristics. While African American adults represent only 6% of the adult population in San Francisco, according to a recent [study](#), they represent 40% of people arrested, and 44% of people booked in county Jail.

Average Per Capita Cost of Non-Refundable Bail Fees

San Franciscans pay as much as \$10-\$15 million dollars annually in nonrefundable bail fees, equivalent to up to \$18 per capita per year. These fees disproportionately impact people of color.



African American Individuals make up 6% of San Francisco's total population, and approximately 38% of individuals paying bail. African American defendants and their families pay up to \$5.7 million annually in nonrefundable fees. This is equivalent to over \$120 per capita per year.



White Individuals make up approximately 41% of San Francisco's total population, and 26% of individuals paying bail. White defendants and their families pay up to \$3.7 million annually in nonrefundable fees. This is equivalent to over \$10 per capita per year.



Hispanic Individuals of all races make up approximately 15% of San Francisco's total population, and 23% of individuals paying bail, paying up to \$3.4 million annually in nonrefundable fees. This is equivalent to over \$26 per capita per year.

Figure 4: Per Capita Costs of San Francisco Bail Bonds.

Sources: 2011-2015 American Community Survey Population Estimates. Analysis on bonds posted between 1/1/16-12/31/16, San Francisco Sheriff's Department. Bail fees estimated assuming 10% payments.

The commercial bail bond industry is neither transparent nor accountable to taxpayers

Bail bond agents are licensed by the California Department of Insurance. There are 39 bail bond agents registered with the Department of Insurance located in San Francisco,¹⁴ and 18 active registered bail bond businesses.¹⁵ Each bail agency is required to be insured by a surety agency, similar to an insurance company, which would pay the courts in the case the bail agency goes bankrupt.

Commercial bail agencies currently play a central role in San Francisco's criminal justice system, but they do not receive the same level of oversight as other supervised pretrial release programs. Bail companies have no obligation to offer bail, and may utilize whichever criteria they would like to decide how and when to offer help. Bail bond agencies are not required to use a risk assessment, or publish their court appearance rates, re-arrest rates, or data that measures the effectiveness of their services.

Information on Payment Rates, Collection Practices, and Who Pays Bail Is Not Collected or Published.

Despite the fact that they often are acting as lenders, data on who cosigns and repays bail loans beyond the defendant is not collected or reported. Little is known about repayment plan structures, requirements, and collections processes used by companies acting as financial institutions. According to a [statement given to KQED](#), the California Department of Insurance does not regulate contracts between bail agents and individuals, although it often receives calls from people across the state who say that a bail agent has taken possession of a car used for collateral, even though the defendant has not missed a court date.

¹⁴ Data provided by the California Department of Insurance as of March, 2017

¹⁵ San Francisco Business Registration Open Data as of March, 2017

A Review of Bail Bond Contracts

Contracts between bail agents and their clients are not currently collected or reviewed. These contracts, which stipulate the payment amounts, payment plan structures, and requirements, are typically signed by both the defendant and their friends and family. Below are observations from a review of six bail contracts provided by defendants to the San Francisco Public Defender's Office:

- Bond amounts were between \$50,00-\$150,000.
- Most agents charged the full 10% of the total bond amount, plus a modest fee.
- Almost all co-signers, or indemnitors, were women.
- Most defendants and their families could not afford the full ten percent upfront, and made partial payments between 12-35% of the amount charged by bail agency.
- Upfront payments ranged from \$1,500-\$5,015, and most established monthly payment plans for the remainder of the ten percent fee.
- Monthly payment plans ranged from \$200-300 per month and for an estimated range of 28-50 months.
- Most contracts stipulate that the premium, or the rest of the ten percent deposit, is due upon release from custody, even if defendant is improperly arrested, bail is reduced, or case is dismissed.

Bail Bond Agency Collection Practices: A Firsthand Account

The following observations were collected from a former bail bond collection agent, who worked for a Bay Area-based bail agency. He requested anonymity due to potential professional and security concerns.

Most of the defendants he worked with didn't have collateral, he described, so they'd call their grandmothers to pay or cosign the loan. "Those are the ones with the assets. The people who walk in the door to pay are grandmas, moms, sisters and girlfriends. It's falling on the women. I wish they'd say no... We were accepting cosigners who didn't have other options. Almost my entire call list for collections was women."

As the individual charged with collecting delinquent debt from clients, he estimated that at least a quarter of the bail bond agency's clientele skipped on their payment plans, leaving them with millions in dollars of account receivables. He described box upon box of returned mail, bounced phone numbers, and delinquency notifications all returned. He likened the environment to the subprime lending mortgage crisis. "We wouldn't require or validate Social Security numbers, IDs, anything. If they walked in with cash, we'd figure it out."

While the delinquency rate was high, he described a lending environment with few consequences. "If we didn't (offer them bail), someone else would. There was no risk assessment, or checking to see if they could pay this back. People would list they were on food stamps, and we would accept their application."

Looking back, he says, bail bond companies are part of a machine that doesn't always work. Often, they're operating within and following the law.

"I want to throw a rock, but it's the system we have. There should be better alternatives than having cosigners take on debt... Why are we offering bail to individuals who don't have the capacity to pay it? There need to be more parameters on payment plans, and to validate that cosigners can pay. You shouldn't charge \$15,000 in bail when their family income is \$10,000... a sliding scale, like other low income financial assistance programs should be utilized."

Complaints against bail agents have tripled over the last five years.¹⁶

According to the Department of Insurance, in 2015, investigations led to the arrest of more than 30 bail bond agents in Santa Clara and surrounding counties for numerous felonies and illegal business practices. According to the Department of Insurance, common types of bail investigations and violations include:

Common Types of Bail Investigations, Violations and Trends:

- Receiving stolen property/contraband in lieu of premium collected—Firearms, narcotics, jewelry, cash, other personal property;
- Ex-convict felon on city or county jail property (PC 4571)
- Bribery and money laundering – Cash business susceptible to tax evasion and corruption;
- Gang conspiracy and/or criminal enterprise – Prearranged agreement between crime enterprise and bail agent (illegal); Suspect bailed out before crime reports written;
- Kidnapping and false imprisonment for purposes of extortion – Pressure family and suspect for purposes of extracting premium payment;

According to the California Department Insurance, many of the complaints originate from bail agents, who report others in their industry for unfair practices, and who want to ensure the industry is compliant with state requirements.

Legally, the deck is stacked in favor of the bail bond industry.

The goal of money bail is to compel a defendant to show up for their trial. The effectiveness of money bail is not based on whether the client commits additional crimes while waiting for trial; it is assessed on whether or not the defendant shows up for court. The bond is “exonerated,” or the bail bond agency is released from their obligation to pay the court, if:

- The client’s charges are dismissed or dropped and they no longer need to appear in court;
- The client is rearrested for an additional crime and booked into county jail;
- The client fails to appear in court, and is successfully located by the bail bond agency;
- The client fails to appear in court, and the bail agency is not notified appropriately; or
- The client appears in court.

If a defendant fails to appear in court, it is the responsibility of the bail agency to locate the defendant. However, it is frequently the county that bears the actual cost of bringing the individual back to jail. A bail bond agency must notify the county of the individual’s location, and law enforcement officers are responsible for bringing the individual back to jail. At times, this may mean transferring the defendant from a jail in a different county, or sending law enforcement officers across county or state lines, and paying for their travel and other expenses.

Finally, qualitative research has shown that bail bond agencies are rarely held accountable to the courts when an individual fails to appear. While bail bond companies are legally obligated to pay the bail bond to the court if a defendant fails to appear, most jurisdictions must pursue a lengthy process to collect bonds that should be forfeited, or paid to the court. Each step of the process is costly to the taxpayer. Locally in San Francisco, it is estimated that bail bond agencies challenge approximately five bail bond forfeitures per month, meaning they are challenging their obligation to pay the full bond to the court. An estimated 75% of these challenges are granted without contest, meaning the bail agency is released from their obligation to pay.¹⁷ Ultimately, this totals millions of dollars in bail that is exonerated, or released from the bail agent’s responsibility each year.

¹⁶ For a full list of complaints, see Appendix Figure 2. [Lewis, Sukey, KQED. 2017.](#)

¹⁷ Interview with City Attorney’s Office

According to the City and County's accounting system, a total of \$128,727 was collected from bail bond agencies in forfeited bonds across 2015 and 2016 combined (\$5,152 collected in 2015, and \$123,575 in 2016, largely due to a single \$80,000 bond, forfeited in September, 2016). Data on the number of bonds where an individual failed to appear is not collected or published, as it is in [Santa Clara](#).

Nationally, [research](#) has shown that bail surety companies have virtually no losses. In numbers submitted by two of the major surety companies to the California Department of Insurance, it appears that bail agents and the surety companies pay between 0.5%-1.1% of their total revenue in forfeited bail.¹⁸ While property and auto insurance companies typically pay out 40 to 60 percent of their revenue in losses, a [review](#) of the financial records of 32 surety companies showed they cumulatively paid less than 1 percent in losses.

Bail is a bad fiscal deal for San Franciscans

Pretrial detention is costly and inefficient when alternative options could ensure public safety and appearance in court.

From 2011 to 2015, one in three people jailed for felony accusations in California were never found guilty of any crime, according to a recent [report](#) from Human Rights Watch. According to the same study, between 2011-2015 San Francisco spent approximately \$3.2 million dollars incarcerating individuals whose charges were dismissed or never filed. The District Attorney's Office estimates that at least [a quarter](#) of the felony cases they review have no action taken, and the case is discharged.

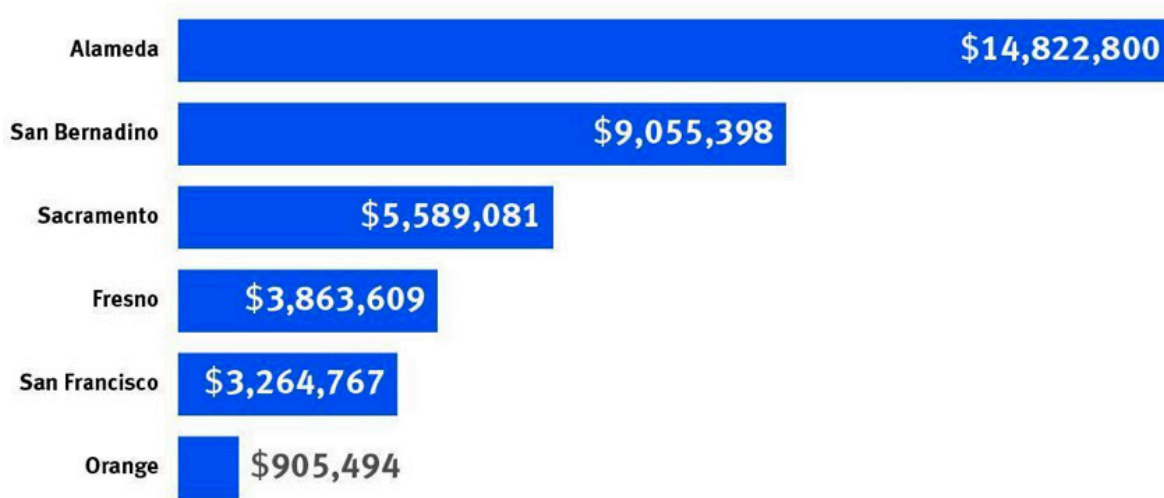
High bail may also be used in place of detention hearings as a preventative measure to keep high-risk individuals incarcerated. According to a point-in-time count of the San Francisco County Jail on August 23, 2016, there were 616 individuals in the jail that would be eligible for release if they posted bail. A quarter of these individuals have been in jail for more than 1,000 days.¹⁹ Of those 616, many of these defendants were charged with serious and/or felonies. It is unclear how public safety is served if any of these high-risk defendants are able to post bail to get out of jail.

In addition to direct government expenditures, defendants in pretrial detention face significant personal costs. The costs could include lost income, housing, and custody of children. The cost of social services for children then falls to taxpayers, even though the charges against the individual may be ultimately dropped. According to [research](#) from Harvard Law School, these individual losses create larger consequences for the local economy, both in lost tax revenue, lost economic activity, and increased costs for social services. [Studies](#) also show that defendants become more likely to reoffend the longer they are detained pretrial: with just two to three days of pre-trial detention, low-risk defendants are almost 40 percent more likely to commit new crimes before trial than equivalent defendants held one day or less.

18 The Sureties estimated \$51.9 and \$51.2 in revenue, and \$558,000 and \$282,000 in forfeited bail, respectively. For more information about bail forfeiture, see Appendix figure 1.

19 For more information about the 616 individuals in custody, see Appendix figure 3

California spent **\$37.5 million** in six counties to jail people whose cases were **dismissed** or **never filed**.



Source: Human Rights Watch analysis of 2014-2015 county jail data & Public Policy Institute of California

Figure 8: Human Rights Watch, Money Spent Detaining Individuals Whose Cases were Never Filed

IV. RECOMMENDATIONS

The goal of proposed bail reforms should be to increase public safety, transparency, accountability, and equity for everyone. Ultimately, most stakeholders agree that the goal is to move away from a system that allows release based on income, and instead base release on the risk posed to the community. However, bail is complex and falls under the jurisdiction of several city, county, and state agencies. Bail agents are regulated by the California Department of Insurance. The bail schedule, specific to each county, is set by each county's Superior Court. The Public Safety Assessment tool recommendations are prepared by the Pretrial Diversion Project, and presented to the Superior Court.

Legislation recently passed in California's Senate, and there is momentum for reform in counties across California. Santa Clara, Los Angeles, and Boards of Supervisors across the state have acted to reform their local pretrial release procedures. The recommendations below outline proposals that address different aspects of the money bail system. Some can be achieved in the short term, and under the direction of the San Francisco Board of Supervisors. Other recommendations may involve working with state and court actors to determine their feasibility, and may require action over the longer-term.

Short Term Reforms

I. Increase use of cost-effective alternatives to incarceration

a. Support and invest in Supervised Pretrial Release to meet the demand for its services.

Supervised Pretrial Release plays a key role in the success of pretrial alternatives to incarceration. With the adoption of the new Public Safety Assessment, the number of screenings has increased by 60% over the last year.²⁰ With the continuing support of the Sheriff, Supervised Pretrial Release has shown to be a cost-effective alternative, and the San Francisco Pretrial Diversion Project has been effective at reducing the jail population by an average of 47% already. However, according to the acting director, the San Francisco Pretrial Diversion Project (SFPDP) has struggled with several main challenges:

- Because their services are grant-funded, they cannot afford to pay staff market rate salaries, and see frequent turnover and long vacancies for posted positions. They state they are currently understaffed to handle the increased demand for their vital role in pretrial diversion services.
- Their office was recently relocated to 115 10th street, a twenty-minute walk away from the Hall of Justice. After their move, they reportedly saw a 20 percent increase in their failure to appear rate. This may be because their prior location, closer to the Courts, the Public Defender, and the jail, allowed for better communication with clients as they waited for trial. The Office is expected to move closer to the Hall of Justice within the next month.

Recommendations to support supervised pretrial release include:

- Provide additional resources to SFPDP to hire additional staff and provide services over more hours (including potentially 24 hours a day as in some other counties).
- Continue discussions about how to maximize the effectiveness and continued sustainability of SFPDP within the Sheriff's Department, and/or explore alternative ways to structure and fund the services within the City and County.
-

20 Interview with acting Executive Director of the Pretrial Diversion Project, January, 2017

- Clearly post and distribute information about pretrial diversion options in jail before arraignment. Ensure defendants have sufficient information about pretrial diversion alternatives while in custody to ensure they do not unnecessarily post bail, and create a system to regularly update information distributed through the jail.
- Continue to implement the current Public Safety Assessment, a risk assessment tool that helps judges make evidence-based decisions about which defendants should be detained prior to trial and which can be safely released.
- Create a strong feedback loop with the courts to increase judicial confidence in the tool.

Progress

There has been initial progress on this front. Mayor Lee’s proposed FY 2017-18 budget includes an additional \$700,000 to support the San Francisco Pretrial Diversion Project, and the Project recently expanded its Board of Directors. Criminal justice partners meet regularly to review the effectiveness of the PSA tool. San Francisco Pretrial Diversion Project is relocating to a closer office on Harrison Street later this month.

- b. Continue and support the Public Defender’s Bail Unit, which aims to free defendants from jail ahead of trial who would be released if they were able to pay bail. Since its inception in 2015, The Bail Unit has filed 443 motions with a 47% success rate.²¹

Progress

The proposed FY 2017-18 budget includes funding for a specialized unit within the Public Defender’s Office that would begin working with clients immediately after booking. The unit would consult with the DA on filing decisions, represent Pretrial Diversion Project with the recommendations for release or participation in diversion at arraignment, and investigate grounds for release and present it to the court within eight hours, per Penal Code section 1269c.

- c. Evaluate and expand the usage of text messaging to increase court appearance rates. Anecdotal stories illustrate that failure to appear in court is often due to negligence, error, or inability to get to the courthouse rather than direct evasion. UpTrust, a text messaging service, reported it helped the City of Richmond increase its court appearance rate by 12%. San Francisco Pretrial Diversion Project and the Sheriff’s electronic monitoring programs currently utilize text-message reminders. Such programs could be evaluated, and if found effective, expanded to other programs.

II. Increase local oversight of the bail bonds industry

Increasing oversight will increase transparency, curb abuse, and recover costs owed to the City and County of San Francisco.

- a. Require bail bond companies to go through a licensing process to operate, and to provide data to increase industry transparency. Complaints against bail bond agencies have tripled statewide in recent years, and very little local data exists to illustrate the effectiveness of money bail. Bail agents are frequently acting as financial institutions, collecting an initial payment and establishing payment plans to collect the remainder of the ten percent fee. Better understanding the payment contracts, structures and systems will allow for increased transparency about industry practices.

21 Success is defined as an earlier release for an incarcerated person as a result of the bail motion, which includes motions which were granted, where bail was reduced and the person posted bail, where cases were resolved at the bail hearing and the person was release earlier than they would have been or the case was dismissed).

Through creating a local license, the City and County of San Francisco could require bail bond agents to submit the following:

- Copies of all form contracts used with defendants/guarantors.
- For each bond issued: the amount, the race and gender of the defendant, the amount of premium charged, the amount of premium rebated (if any), the amount of premium collected up front (if any), the nature/value of any collateral, whether any electronic/GPS monitoring is used, and amount and nature of any other fees/expenses charged.
- Date(s) on which (1) forfeiture was declared; (2) forfeiture was set aside; (3) summary judgment was entered; (4) summary judgment was set aside; (5) bail was exonerated.²²
- Amount of premium outstanding (on periodic reporting dates, at exoneration, etc.), and dates and amounts of any late fees assessed.
- If the defendant was re-arrested pending trial, in San Francisco or other jurisdictions.
- If the defendant was surrendered to custody, (1) the date of such surrender; (2) the reason for the surrender; (3) whether the premium was refunded.
- Nature of any collateral seized, amount credited against outstanding obligations, and amount and nature of outstanding obligations.

The license could be required to post bail in San Francisco's Superior Court, to enter San Francisco's County Jail in coordination with the Sheriff's Department, or to register as a business within the City and County of San Francisco.

- b. Increase abilities of the City and County to collect forfeited bail from bail bond agencies when someone fails to appear in court. Monetary bail is based on the premise that the bail agent will pay the full amount if their client fails to appear in court. However, California law requires burdensome procedures that the county must follow to collect forfeited bail. Statewide estimates suggest approximately 1% of bail revenue ends up forfeited and returned to the state. Increasing staff attention to this matter has proven successful in Santa Clara.
- c. Ensure the county recovers the costs paid to pick up a defendant who failed to appear while out on bail. When an individual fails to appear in court, the bail bond agency is responsible for locating the individual. However, it is frequently the county that bears the cost of recovery; whether through sending law enforcement officers to pick the individual up, or to transfer the individual from a different institution across county or state lines. Penal code section 1306b allows the City and County to recover the costs from the bail bond agency that secured their release.

III. Minimize the time spent waiting to see a judge

- a. Decrease the amount of time waiting in-custody for arraignment. According to the Pretrial Diversion Project, approximately half of defendants are not eligible for release prior to seeing a judge at arraignment unless they post money bail, due to the nature of their charges. While arrestees must be brought before a judge within 48 hours, this timeline excludes weekends and holidays. As a result, defendants can wait up to five days prior to seeing a judge, and may face negative consequences such as job loss, loss of custody of children, and more. Defendants waiting for arraignment may choose to post bail, because they cannot wait for a judge to determine if they are eligible for pretrial release.

According to the Pretrial Diversion Project, pre-arraignment delays are typically due to lack of the police report, an inaccessible client, or because there is only one decision period for release every 24 hours. If a defendant misses the window, they must wait until the next day. Arraignment delays are a result of

22 Santa Clara Superior Court collects and makes public some of this information in their "Bonds Filed Report."

waiting for the District Attorney's office to re-book and charge the case, which does not currently occur over weekends and holidays.

Solutions include:

1. Accelerate the delivery of incident reports from SFPD to pretrial services and/or identify other ways to streamline preparation of materials for the court.
2. Implement weekend and holiday re-booking of arrestees by the District Attorney's Office.

Progress

The proposed FY 2017-18 budget includes a proposed \$588,000 to fund additional staff at the District Attorney's Office, to help prevent people from waiting in jail over weekends and holidays while the city decides whether or not to file charges. The one-time program will be monitored by the Controller's Office to ensure it has the desired impact.

Additionally, in partnership with the City Attorney's Office, the Sheriff's Department, the Police Department, and San Francisco Pretrial Diversion Project, SFPDP staff are able to access police incident reports and review them more quickly.

Medium-Term Reforms

I. Lower the cost and financial burden of bail in San Francisco.

Median felony bail in California is \$50,000; more than five times the national average. San Francisco's bail schedule is in the top quartile in the state.

- a. Explore the creation of a nonprofit bail revolving loan fund. Bail Funds pool money to help people pay bail who cannot afford it. As people's cases resolve, the bail paid revolves back to the fund, available to help other defendants in need. There is a national network of community bail funds. In Brooklyn, for example, the bail fund is available to help people charged with misdemeanors, and 95% of bail fund clients make all court appearances. Most San Franciscans who pay bail do so for felony charges, and bail levels are significantly higher than other communities with bail funds. Further exploration is needed to determine if this model can be adopted to fit San Francisco's unique circumstances. Potential avenues could include the creation of a nonprofit revolving bail fund, which would post the entire, refundable bail amount to the court, or exploring city-led public options. As of the August 23rd, 2016 point in time count, there were 19 defendants still in jail with bail set at less than \$10,000, and an additional 56 defendants with bail set at less than \$50,000.
- b. Work with the Superior Court to explore ways to lower the costs of bail. including by reducing the amounts for some or all offenses, basing bail on ability to pay, and/or narrowing the circumstances in which bond amounts are combined for individuals charged with multiple offenses.

Progress

San Francisco's bail schedule is set by the San Francisco Superior Court. SB10, which recently passed through the California State Senate, eliminates county bail schedules and requires every county to implement risk-based assessment tools. Presiding San Francisco Judge Teri L. Jackson currently sits on the Pretrial Detention Reform Work Group, which is studying current pretrial detention practices and

will provide recommendations for potential reforms focused on fairness and public protection. They are expected to release their recommendations by December 2017.

Long Term Reforms

I. Advocate for Statewide Reform

Much of local bail regulation is determined at the statewide level. To ensure pretrial release decisions are based on risk, not wealth, the City and County of San Francisco could engage in state-level legislative advocacy to recommend the State of California consider legislative solutions such as:

- Move away from money bail toward a system that is based on risk, to ensure decisions to keep someone in jail are based on the risk they pose to the community, not the amount of money in their bank account. Other states, such as New Jersey, Oregon, Kentucky, Illinois, New Mexico and Wisconsin have taken a variety of steps toward that goal.
- Lessen the inequitable impact of the money bail system through:
 - » Adopting a statewide bail schedule based on ability to pay
 - » Allowing county courts to accept partial bail deposits, which are refundable after appearing in court (such as paying the ten percent directly to the court, and returning the money after the case is resolved).

Progress

There is possible progress on this front. A bill recently passed through the California State Senate, SB10, which moves toward a system that is based on risk, eliminates fixed bail schedules, and allows for partial payments of bail to the courts, which would be refunded after successfully appearing in court. The City and County of San Francisco endorsed this legislation earlier this year.

V. CONCLUSION

Across the state and the country, there is growing momentum to reform monetary bail. Lawsuits challenging the constitutionality of bail have been filed in at least nine states. Senate Bill 10, which would reform the California system of bail, is moving through the legislative process. The Chief Justice of California appointed a working group of judges to recommend changes in pretrial detention to evaluate California's system of bail. Counties across California, including Santa Clara and Los Angeles, are considering and enacting county-led reforms. These calls for reform share a core message: that pretrial release and detention should be based on risk, not wealth.

Local Reforms in Motion

- ✓ The City and County of San Francisco is actively supporting SB10, which would require pretrial diversion services at the county level, eliminate fixed bail schedules, and would allow courts to accept partial bail payments that are refundable after appearing in court.
- ✓ The proposed San Francisco FY2017-18 budget includes:
 - An increase of \$700,000 for the San Francisco Pretrial Diversion Project, to support their increased workload with the implementation of the Public Safety Assessment.
 - A proposed \$368,000 for the Public Defender's Office, to create a specialized unit to work with clients immediately after booking, investigate grounds for release, and represent San Francisco Pretrial Diversion Project with the recommendations for release at arraignment or participation in diversion.
 - A proposed \$588,000 to launch a pilot project with the District Attorney's Office to resume weekend rebooking, which would prevent people from waiting in jail over holidays and weekends while the city decides whether to file charges.
- ✓ Continued implementation and evaluation of the Public Safety Assessment, which has already increased the rates of release for those awaiting trial.

Locally, however, there is still more work to be done. With San Franciscans paying an estimated \$10-15 million in nonrefundable bail fees per year, increased oversight and transparency of the bail bond industry in San Francisco is required to better understand the effectiveness of money bail, and to ensure the industry's payment and collection methods are operating within the law. These reforms are under the San Francisco Board of Supervisors' discretion to enact, and would increase transparency and curb abuse in an industry that plays a critical role in San Francisco's system of justice.

APPENDIX

Key Terms

Arraignment: The defendant's first court appearance, normally scheduled within 48 hours of their arrest, excluding evenings and weekends. At the arraignment, the charges are read against the defendant, and they can enter a plea (guilty or not guilty). At this point, the judge may reduce or raise the bail amount from the bail schedule, or grant supervised pretrial release.

Bail Schedule: A list that sets the amount of bail a defendant is required to pay, based on the nature and severity of the charge(s) for which the defendant is booked. Each bail schedule is set by their county's Superior Court, and is regularly updated. San Francisco's bail schedule can be found [here](#).

Charge: A criminal charge is a formal accusation made by a government authority asserting that someone has committed a crime. A single crime may result in several charges, based on penal code violations.

Defendant: The individual accused of committing a crime.

Exoneration of Bail: When the bail agent, or surety, is no longer liable to pay the bail amount to the court.

Forfeiture of Bail: When the bail agent, or surety, must pay the entirety of the bail bond to the court, because their client failed to appear for their court date.

Pretrial: The period after the defendant has been arrested, but is still waiting for their case to be adjudicated.

Surety: An agency that insures bail bond agents. Agents are required to be in contract with a surety in order to be licensed by the California Department of Insurance.

Summary Judgment: A financial penalty entered by the court awarding the case for one party, and against another party.

About the Financial Justice Project

The San Francisco Office of the Treasurer is the first in the nation to launch a Financial Justice Project to assess and reform how fines and fees impact our city's most vulnerable residents. The Financial Justice Project examines questions such as: What policy objectives are these financial penalties advancing? Are they serving San Francisco residents, the community and the city at large? Are there better ways to achieve our goals?

In late 2016, the San Francisco Board of Supervisors directed the newly-created Financial Justice Project to staff a Fines & Fees Task Force. City and County departments and community organizations came together to develop recommendations to reform the inequitable burden of fines, fees, and financial penalties on low income San Franciscans and communities of color. For more information on the Fines and Fees Task Force, and the group's recommendations, see the [Initial Findings Report](#).

Figure 1: Bail Transactions & Forfeitures in California
 Source: California Department of Insurance "Bail Basics."

BAIL TRANSACTIONS IN CALIFORNIA

In 2014, CDI conducted a limited exam to determine bail activity in the State of California. The exam focused on calendar years 2011, 2012 and 2013 and identified 17 Sureties conducting bail in California. There are roughly 3200 licensed Bail Agents in CA.

- During the 3 year period, an average of 205,000 bail bonds were executed per year.
- The Face Value of Bail Bonds written during the exam period averaged \$4,440,493,079
- 13 of the 17 Sureties reported that Bail Agents/Bail Agencies collected \$924,654,956 in total gross bail bond premium (2011-2013), which amounted to an average of \$308,218,318 collected per year. 4 Sureties could not provide the total gross amount collected.
- Bail Agents/Bail Agencies remitted \$87,221,865 to their respective Surety during the same 3 year period, which is an average of \$29,073,955 per year.

	2011	2012	2013
*TOTAL BONDS WRITTEN	229,000	212,000	176,000
TOTAL FACE VALUE OF BAIL BONDS WRITTEN	\$4,659,254,966	\$4,582,076,365	\$4,080,147,907
*8% PREMIUM – ESTIMATED CONSUMER COST TO PURCHASE BAIL BOND (collected by BAIL AGENT)	\$372,740,397	\$366,566,109	\$326,411,832
NET PREMIUM REMITTED TO SURETIES	\$30,104,877	\$29,841,459	\$27,275,529
*DIFFERENCE BETWEEN PREMIUMS COLLECTED AND RETAINED BY BAIL AGENTS (@8%) AND AMOUNT REMITTED TO SURETY	\$342,635,520	\$336,724,650	\$299,136,303

SURETY FORFEITURE¹ ANALYSIS

Surety #9 (For Period January 2012 through December 2013)

2012 Forfeitures	2013 Forfeitures	2012-2013 (32) Forfeiture Payments paid by Bail Agents	2012-2013 (16) Forfeiture Payments paid by BUF (Build Up Fund)	2012-2013 (0) Forfeiture Payments paid by Surety	2012-2013 Total Gross Premium Charged/Collected by Agents	2012-2013 Total Forfeiture Payments (Agent Paid and BUF Paid)
1,478	1,583	\$265,360	\$322,735	\$0	\$51,889,943	\$588,095

Surety #12² (For Period January 2012 through December 2013)

2012 Forfeitures	2013 Forfeitures	2012-2013 (19) Forfeiture Payments paid by Bail Agents	2012-2013 (0) Forfeiture Payments paid by BUF (Build Up Fund)	2012-2013 (0) Forfeiture Payments paid by Surety	2012-2013 Total Gross Premium Charged/Collected by Agents	2012-2013 Total Forfeiture Payments (Agent Paid and BUF Paid)
1,085	1,162	\$282,484	\$0	\$0	\$51,178,376	\$282,484

¹ Forfeiture payment analysis does not consider collateral taken by Bail Agent at time of transaction; Collateral includes jewelry, cash, vehicle titles and property liens to mitigate risk for potential bail forfeiture payment(s); If proper underwriting occurs, the forfeiture payment is mitigated by the holding of collateral;

² Surety 12 did not provide breakdown of whether forfeiture payment was from Agent, BUF or Surety; Industry standard is that Surety is indemnified by Agent;

Figure 2: Number of Types of Bail Bond Investigations
Source: California Department of Insurance "Bail Basics."

Investigation Division & Consumer Services Division Statewide Bail Cases & Complaints

- 2010 – 62 Complaints/Cases; 45 Referrals to Prosecutors
- 2011 – 82 Complaints/Cases; 66 Referrals to Prosecutors
- 2012 – 225 Complaints/Cases; 52 Referrals to Prosecutors
- 2013 – 230 Complaints/Cases; 36 Referrals to Prosecutors
- 2014 – 227 Complaints/Cases; 150 Referrals to Prosecutors
- 2015 – 238 Complaints/Cases; 77 Referrals to Prosecutors

Common Types of Bail Investigations, Violations and Trends:

- Receiving stolen property/contraband in lieu of premium collected – Firearms, narcotics, jewelry, cash, other personal property;
- Ex-convict felon on city or county jail property (PC 4571)
- Bribery and money laundering – Cash business susceptible to tax evasion and corruption;
- Gang conspiracy and/or criminal enterprise – Prearranged agreement between crime enterprise and bail agent (illegal); Suspect bailed out before crime reports written;
- Kidnapping and false imprisonment for purposes of extortion – Pressure family and suspect for purposes of extracting premium payment;
- Perjury and filing false documents – Illegal or forged property liens (notary scam), lying to the court to extend or vacate a forfeiture, obtaining or creating false death certificates for the purpose of discharging a forfeiture;
- Unlicensed activity/Illegal Solicitation – soliciting and negotiating bail without a license (usually a minimum wage employee); soliciting bail in a prohibited place – court, jail, police station;
- Jail inmate "capping" - illegal solicitation within the jail by inmate working for bail agent (paid);
- Theft or embezzlement of collateral or premium – Immigration hold scam (suspect pays bail premium but unable to obtain release due to hold – bail agent illegally retains money); bail agent embezzles premium from surety;
- Create fake or false bail bonds – Submits to court or jail; crime is only discovered if the suspect fails to appear;
- Website misrepresentation/misdirection, "spoofing" - unfair and deceptive marketing business practices; search engine redirect scam – the family believes they are on a county jail or government website, and input defendant information for jail location and bail amount. In fact, they are actually inputting data into a bail company website and shortly thereafter receive a call for unwanted bail services; Technology and mobile applications make access to arrestee information (data mining) more readily available – public information that is legally sold to bail agents; unscrupulous agents will use the data to "bond drop" or conduct illegal solicitations of arrestees;
- Attorney-Client jail visiting room scams – use of unmonitored room for purposes other than bail, to illegally solicit other inmates for bail or to conduct communication with inmates for other criminal activity;

Figure 5: Data on 616 remaining in custody on August 23, 2016

Detail on Remaining 616 in Custody							
Average of 11 charges each (median is 9)				386 Reported a SF Address			
30% are Gang Affiliated				66 Reported an East Bay Address			
				83 Reported Homeless			
Top Five Most Severe Charges			Snapshot August 23, 2016		Age Ranges/Gender		
2nd Degree Burglary	94				18 - 25	146	
2nd Degree Robbery	70				26 - 35	208	
1st Degree Robbery	62				36+	262	
1st Degree Residential Burg.	35				Male	540	
ADW Not Firearm	25				Female	76	
Ethnicity			Days in Custody by Ethnicity				
	#	Percentage	90 + Days	30-90 Days	1 -30 Days	6-10 Days	Total
Black	288	46.00%	140	77	59	12	288
Hispanic	107	17.00%	56	25	23	3	107
White	158	26%	54	53	35	16	158
Other	63	10%	31	20	9	3	63

¹⁰ The Sheriff’s Department represents that the breakdown of release eligibility in this August 23, 2016 snapshot is typical and representative of any day in recent history.