

Proposition 25

Elimination of Cash Bail System

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Purpose

Proposition 25 is a referendum that gives voters the chance to approve or reject a recent decision by the legislature to abolish cash bail in California.

Background

The California Constitution guarantees that, with some exceptions, those who are arrested and placed in county jail have a right to be released before trial. Under current law, most persons are released either on their own recognizance or on bail. If bail is required, the court determines an amount of money the person needs to deposit with the court in order to be released. The money serves as collateral to ensure that, after release, the person will appear in court. This money is typically returned if the person appears as required.

Some people awaiting trial are able to pay bail out of their own resources. Others enter an arrangement with a bail bonds agent in which they pay a fee (usually not more than 10 percent of the bail amount) to buy a bail bond backed by an insurance company. The fee is non-refundable.

The bail industry in California includes about 2,500 licensed bail agents and 20 insurance companies that back bail bonds.¹

The cash bail system is used throughout the United States. California is the first state to seek to abolish it.²

In 2018, the legislature approved and Governor Jerry Brown signed SB 10, a measure to eliminate the cash bail system for persons awaiting trial, and to replace it with new procedures for determining pretrial release.

Opponents of the new law, led by the bail bond industry, gathered enough petition signatures to qualify this referendum for the ballot. The state's referendum procedure allows voters to decide whether a law recently enacted by the Legislature should go into effect. Once the

¹ Legislative Analyst's Office, "Proposition 25: Ballot Analysis," <https://lao.ca.gov/BallotAnalysis/Proposition?number=25&year=2020>.

² Thomas Fuller, "California is First State to Scrap Cash Bail," *New York Times*, August 28, 2018, www.nytimes.com/2018/08/28/us/california-cash-bail.html.

referendum qualifies for the ballot, the law is suspended until the people have a chance to vote on it.

Proposal

Proposition 25 allows voters to determine the fate of SB 10. A “Yes” vote would allow the law to go into effect; a “No” vote would prevent it from doing so. Accordingly, this section summarizes the provisions of SB 10.

SB 10 would eliminate the use of bail as a condition of release before trial. Instead, the law would create a new process for pretrial release. This process would:

- Require automatic release for most misdemeanors. Some exceptions would apply. For example, people arrested for domestic violence or for failing to appear in court multiple times in the previous year, would not automatically be released.
- Establish a risk assessment system for determining release of persons accused of felonies, as well as for misdemeanors not eligible for automatic release. Trial courts would use personal information and risk level (as determined by a risk assessment computer program) to determine whether an individual could be released.
 - Low-risk and some medium-risk people would be released but could be subject to conditions such as check-ins or electronic monitoring.
 - Those who are deemed high-risk and some medium-risk individuals would be held in county jail until arraignment.
 - After arraignment, most would be released on their own recognizance, but district attorneys could request a hearing to detain a person in jail until trial.
- Require that no one could be charged fees as a condition of release.³

Fiscal Impact

According to the Legislative Analyst’s Office, if voters approve Proposition 25, the new pretrial release policy would have fiscal consequences at both the state and local level, but the size of these effects is uncertain.⁴ Costs associated with state and local pretrial release would increase, as the new process would expand the workload for state trial courts, district attorneys, and public defenders. These costs could total hundreds of millions of dollars, but the actual amount would depend on the number of people released pretrial, the supervision required upon release, and any associated costs. Additionally, county jail costs would decrease due to smaller jail populations. This change could produce tens of millions of dollars in savings. Finally, shifting to this new system would affect state and local taxes, although the net effect is unknown.

Supporters

Supporters of a “Yes” vote on Proposition 25 include:

³ Legislative Analyst’s Office, “Proposition 25.”

⁴ Ibid.

- Governor Gavin Newsom (D)
- State Senator Robert Hertzberg (D-Van Nuys) (author of SB 10)
- Other Democratic elected officials
- California Democratic Party
- California Public Defenders Association
- Western Center on Law and Poverty

As of September 19, 2020, supporters raised approximately \$8.3 million in total contributions. Former Microsoft CEO Steve Ballmer and Connie Ballmer and are the largest donors, each contributing \$2.5 million.⁵

Arguments of Supporters

Supporters say Prop 25 would:

- Abolish a system that unfairly punishes the poor, arguing that they often cannot afford bail and are detained for long periods of time without due process.
- Create a safer, more fair, and less costly process to determine pretrial release.
- Eliminate the bail industry, which doesn't care about communities.⁶

Opponents

Those who urge a "No" vote on Prop 25 include:

- The bail industry
- California Peace Officers Association
- District attorneys and sheriffs from a majority of counties
- Crime Victims United
- NAACP
- Howard Jarvis Taxpayers Association

As of September 19, 2020, opponents raised approximately \$9 million in total contributions, nearly all of which came from the bail industry. Triton Management Services, LLC, a big player in the industry, was the largest donor at \$2.7 million.⁷

Arguments

Opponents argue that the new law would:

- Make communities less safe.

⁵Ballotpedia, "California Proposition 25, Replace Cash Bail with Risk Assessments Referendum," [https://ballotpedia.org/California_Proposition_25,_Replace_Cash_Bail_with_Risk_Assessments_Referendum_\(2020\)](https://ballotpedia.org/California_Proposition_25,_Replace_Cash_Bail_with_Risk_Assessments_Referendum_(2020)).

⁶ California Secretary of State, "Official Voter Information Guide, November 3, 2020, General Election: Proposition 25," <https://voterguide.sos.ca.gov/>.

⁷ Ballotpedia, "Proposition 25."

- Cost taxpayers hundreds of millions of dollars to implement, thereby worsening the California budget crisis.
- Discriminate against minorities and the poor because computer profiling is biased against them.⁸

Conclusion

A YES vote on Prop 25 would eliminate the cash bail system in California. Instead, people arrested for most misdemeanors would be released automatically. For other crimes, pretrial release would be based on an assessment of the risk that the person would commit another crime or fail to appear in court. No one would be charged fees as a condition of release.

A NO vote would keep California's cash bail system in place. Some people would continue to pay bail to be released from jail before trial. Others would be released without paying bail. Fees could continue to be charged as a condition of release.

⁸ California Secretary of State, "Official Voter Information Guide."