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NATION'S LARGEST TRIAL COURT UNVEILS SAFE AND FAIR PRE-ARRAIGNMENT RELEASE PROTOCOLS FOR NON-VIOLENT, NON-SERIOUS FELONIES AND MISDEMEANORS

New Pre-Arraignment Release Protocols Prioritize Public Safety by Focusing on Risk to Community Safety While Reducing Reliance on Money Bail, Set to Take Effect October 1

Today the Superior Court of Los Angeles County approved a new set of bail schedules that include safe and fair Pre-Arraignment Release Protocols which determine release status based on an arrestees' risk to public or victim safety and their likelihood of returning to court while reducing reliance on money bail as a condition of release for many of those arrested in Los Angeles County for non-violent, non-serious felonies and misdemeanors, Presiding Judge Samantha P. Jessner announced.

"Today the Court approved a shift in the way we approach pre-arraignment release for non-violent, non-serious felonies and misdemeanors that acknowledges the fundamental inequality of money bail," said Presiding Judge Jessner. "A person's ability to pay a large sum of money should not be the determining factor in deciding whether that person, who is presumed innocent, stays in jail before trial or is released. Any determination of an arrestee's status after arrest but before being charged should be based on an individualized determination of risk and likelihood to return to court. A low-risk arrestee should not be held in jail simply because they cannot post the necessary funds to be released pending arraignment. I applaud the members of the Court's Bail Committee and Executive Committee for producing an innovative approach that, for those arrested for non-violent, non-serious felony offenses and misdemeanors, considers the

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PRE-ARRAIGNMENT RELEASE PROTOCOLS

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individual's risk to public and victim safety and likelihood of returning to court while minimizing reliance on money bail to secure pre-arraignment release. The Court looks forward to working with County leaders, including our law enforcement and justice partners, to continue to think broadly about what we can do as a community to facilitate the protection of public safety, maximize the likelihood that these persons will return to court and ensure that low-level offenders do not sit behind bars prior to arraignment simply because they cannot afford bail."

The California Constitution provides that the purpose of bail is to ensure an arrestee appears for all court appearances and reduce the risk to public or victim safety. Under the Constitution, most arrestees who are presumed innocent until proven guilty beyond a reasonable doubt are entitled to release on bail while awaiting trial. In addition, the Constitution prohibits excessive bail and requires that judicial officers take into account the protection of the public, safety of the victim, seriousness of the offense charged, previous criminal record of the defendant, and the probability of the arrestee appearing at court appearances. The United States Supreme Court has stated that "in our society liberty is the norm, and detention prior to trial is the carefully limited exception," and the Court's action today seeks to make this a reality.

"With the implementation of the new Pre-Arraignment Release Protocols, the Court is helping to develop a robust and dynamic pre-arraignment release system for non-violent, non-serious felonies and misdemeanors that prioritizes public and victim safety and equal access to justice for all," said Executive Officer/Clerk of Court David W. Slayton. "We are hopeful the protocols announced today will build on our productive and collaborative working relationships with members of the LA County criminal justice community as we work together to change the landscape of and thinking around pretrial release for low-level crimes."

Uniform county bail schedules are established by the Court under the authority granted by Penal Code Section 1269b(c). Under the traditional bail schedule model, crimes correspond with specific dollar amounts, which individuals can post as bail to secure release prior to their arraignment, which is typically held within 48 hours of arrest if the arrestee is detained, regardless of the arrestee's risk to public safety and likelihood to return to court.

The newly adopted felony and misdemeanor bail schedules, which include the new Pre-Arraignment Release Protocols, will replace uniform misdemeanor and felony bail schedules for arrestees before arraignment. Under the protocols included in the new bail schedules, crimes will correspond with pre-arraignment release terms based on the arrestee's risk to public and victim safety and likelihood of returning to court. Instead of assigning a money bail amount to low-level, non-violent, non-serious offenses, the majority of these arrestees will be released at the location of arrest or booked and then released on their own recognizance with a promise to appear at arraignment. Persons arrested for certain crimes which pose a greater risk to the public will be referred to a magistrate, available 24 hours a day, seven days a week, who will exercise discretion by conducting individualized determinations of the appropriate non-financial pre-arraignment release terms and conditions of the arrestee necessary to reduce the risk to the public and victim safety and the likelihood of the arrestee returning to court. Examples of release terms and conditions include prohibitions against engaging in illegal conduct, text

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reminders about court appearances, check-ins with court staff, home supervision and electronic monitoring.

Pursuant to the law, all release conditions for arrestees may be reconsidered by a judicial officer at arraignment. At that time, judicial officers will consider the facts presented and the arguments made by counsel, rely on applicable legal precedent, and exercise their discretion to determine release conditions and an amount of bail necessary to ensure the safety of the public and victim and likelihood of the arrestee returning to court.

The newly adopted bail schedules will take effect on October 1 to provide law enforcement and justice partners the opportunity to design and implement systems, procedures and tools to accommodate the new pre-arraignment protocols.

Persons charged with capital offenses or certain felonies designated in the California Constitution and Penal Code 1270.5 will remain ineligible for pre-arraignment release.

As mandated by Penal Code 1270.1, persons arrested for serious or violent offenses under the law remain eligible to post money bail for pre-arraignment release, but will not be eligible for cite and release, book and release or magistrate review.

Persons arrested for felonies while on Post-Release Community Supervision or while on Parole will not be eligible for cite and release or book and release and will be referred to a magistrate for review.

The new bail schedules reflect the conclusions of the Judicial Council of California's [2017 Pretrial Detention Reform Workgroup](#) that pretrial systems that rely exclusively on the financial resources of the accused are inherently unsafe and unfair. Consistent with these conclusions, for non-violent, non-serious felonies and misdemeanors, the newly adopted bail schedules will decrease reliance on money bail as a condition of pre-arraignment release in recognition that these persons have not yet been convicted of the crime for which they were arrested and that an individualized determination of risk and tailored conditions are more effective in reducing risk to the public and victim and failure to appear rates. The schedules are also consistent with precedent set by other jurisdictions throughout the nation, including New Jersey, Kentucky and Washington D.C., whose systems have largely removed money bail as a condition of release while concomitantly reducing crime and failures to appear in court.

The newly adopted bail schedule for misdemeanors is [available here](#). The newly adopted bail schedule for felonies is [available here](#). A fact sheet is available below.

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SAFE, FAIR AND JUST PRE-ARRAIGNMENT RELEASE PROTOCOLS

“In our society liberty is the norm, and detention prior to trial...is the carefully limited exception.”¹

- ❖ It is fundamental to the United States’ criminal justice system that a person charged with a crime is presumed innocent until proven guilty beyond a reasonable doubt. With some exceptions, under the California Constitution, a person accused of committing a criminal offense and arrested for that alleged crime is entitled to be released from jail on bail. Bail is intended to **ensure the safety of the public and alleged victim and the arrestee’s future appearance** in court. Bail is not intended to punish a presumed innocent person who does not have the financial means to post bail.
- ❖ The new Protocols **for non-violent and non-serious felonies and misdemeanors** consider an arrestee’s risk to public and victim safety and likelihood of returning to court and base the decision to release eligible arrestees on that risk rather than on purely financial terms. In doing so, for misdemeanors and non-violent and non-serious felonies, the bail schedules shift decisions to release an arrestee pending arraignment away from a system that relies almost exclusively on a person’s financial wherewithal to a system that is **tailored to an individual’s risk to public safety and ensuring future appearances in court.**

PRE-ARRAIGNMENT RELEASE PROTOCOLS

The Court issues Felony and Misdemeanor Bail Schedules annually which are developed by the Court’s Bail Committee and submitted to the Court’s Executive Committee for approval. Historically, in bail schedules an offense corresponds to a specific dollar amount of bail. Notwithstanding the fact that law enforcement releases some individuals prior to or at booking based on their own internal policies, and magistrates release some individuals on their own recognizance, many individuals remain in jail or are released based on their ability or lack of ability to post the pre-set bail amount, even though they do not present a risk to the community. Money bail does not involve consideration of whether the defendant poses a threat to public safety because persons who can afford to post bail are released, regardless of the risk they may pose to the community.

During the COVID-19 pandemic, to address the public health risk associated with jail overcrowding and pursuant to the Judicial Branch’s Emergency Rules Related to COVID-19, the Court issued an Emergency Bail Schedule (EBS), which reduced bail amounts to \$0 for most non-violent, non-serious felonies and misdemeanors. Emergency Bail Schedules were in place in Los Angeles County from March 20, 2020, to June 30, 2022, when the Judicial Branch Emergency Rules expired. According to a report issued by the County of Los Angeles, in the first quarter of 2021, when the EBS was in effect, “rates of failure to appear (FTA) in court and of rearrest or new offenses remained either below or similar to their historical average.”²

A newly-released Judicial Council of California report shows that risk-based release decisions that are not reliant on money bail result in increased public safety – a 5.8% decrease in rearrest/rebooking for misdemeanors and a 2.4% decrease in rearrest/rebooking for felonies.³ In other words, risk-based decision making did not result in more crime committed by those who were released; nor did it decrease the likelihood that those released would return to court.

As a result of a recent court decision, the EBS was reinstated in Los Angeles County for the Los Angeles Sheriff’s Department and Los Angeles Police Department and is effective through August 17, 2023. The judge wrote, *“enforcing...secured money bail schedules against poor people who are detained in jail solely for the reason of their poverty is a clear, pervasive and serious constitutional violation.”*⁴ The only law enforcement agencies named as defendants in the case were the LAPD and LASD. As a result, the ruling is not applicable to the 50+ remaining law enforcement agencies in Los Angeles County that arrest citizens every day. Those other law enforcement agencies in the County continue to operate under the Court’s previously adopted 2023 Bail Schedules, resulting in lack of uniformity for arrestees across Los Angeles County, confusion and lack of due process and fairness in terms of pre-arraignment release status.

Emergency Bail Schedules were never intended to be permanent. While they reduce reliance on money bail, they fail to consider each arrestee’s risk to public and victim safety and the defendant’s likelihood of returning to Court.

The new protocols within the newly adopted bail schedules consider an arrestee’s risk to public and victim safety and likelihood of returning to court and base the decision to release eligible arrestees on individual risk rather than on purely financial terms. For misdemeanors and non-violent felonies only, rather than an amount of money bail to secure release, the bail schedule will list one of three actions – Cite and Release (CR), Book and Release (BR), and Magistrate Review (MR).

SAFE, FAIR AND JUST PRE-ARRAIGNMENT RELEASE PROTOCOLS FOR LOW-LEVEL OFFENSES – HOW THEY WORK:

The newly adopted bail schedules provide for the safe, fair, just and timely pre-arraignment release of those arrested for **non-violent, non-serious felonies and misdemeanors**. Consideration of the **risk to public safety is a cornerstone** of the schedules: those who pose a significant threat to the public or those who are unlikely to return to court will not be released prior to arraignment. See below for some examples of types of offenses that fall under each pre-arraignment release category:



EXAMPLES OF OFFENSES NOT ELIGIBLE FOR PRE-ARRAIGNMENT RELEASE:

Capital offenses such as murder with special circumstances and certain felonies identified in the State's Constitution.

EXAMPLES OF OFFENSES SUBJECT TO MAGISTRATE REVIEW (MR):

Offenses involving firearms, such as possession of a loaded firearm, sexual battery, violence against children or elders, contact with minor with intent to commit a sexual offense, and battery against an elder or dependent adult.

Persons arrested for a felony while on Parole or on Post-Release Community Supervision are also subject to Magistrate Review.

EXAMPLES OF OFFENSES ELIGIBLE FOR CITE AND RELEASE (CR) OR BOOK AND RELEASE (BR) INCLUDE:

Most theft offenses, vehicle code violations, offenses against property such as petty theft; vandalism; etc.

EXAMPLES OF OFFENSES NOT ELIGIBLE FOR NON-FINANCIAL TERMS OF RELEASE:

Offenses involving serious or violent felonies and domestic violence offenses are not eligible for non-financial terms of release prior to arraignment pursuant to Penal Code section 1270.1. Based on existing law, these offenses remain eligible for release only on monetary bail amounts prior to arraignment.

OTHER JURISDICTIONS THAT RELY ON INDIVIDUALIZED RISK DETERMINATIONS INSTEAD OF MONEY BAIL:



A 2017 constitutional amendment replaced cash bail with a risk-based system of pretrial release.



Washington D.C.

Commercial bond was virtually eliminated in 1992, but the law still allows for it in limited circumstances. The Pretrial Services Agency interviews arrestees and bring them to court within 24 hours of arrest. 84% of arrestees are released on their own recognizance.



Commercial bond was abolished in 1976. Pretrial Services conducts risk assessments and interviews with arrestees within 24 hours of arrest. Most defendants are released on own recognizance and/or other non-financial means.

¹ *United States v. Salerno* (1984) 481 U.S. 739, 755.

² FIRST QUARTERLY UPDATE ON DATA COLLECTION TO SUPPORT PRETRIAL REFORM IN LOS ANGELES COUNTY, March 9, 2022

³ Judicial Council of California. *Pretrial Pilot Program: Final Report to the Legislature*. July 21, 2023. (Available at <https://jcc.legistar.com/gateway.aspx?m=1&id=3071>).

⁴ *Phillip Urquidi v. City of Los Angeles, Et. Al.* (2022)