



Rethinking Justice through Bail Reform

Nearly [half a million](#) people sitting in U.S. jails today have not been convicted of a crime. Most jurisdictions in the country operate a cash bail system, in which the court determines an amount of money that a person must pay to be released from detention. Those who do not have the financial resources to post bail will generally choose between jail time or use of a commercial bail bondsman, or bail bond agent, depending on their state laws. Based on collective data related to cash bail and pretrial detentions, the topic of pretrial reform has attracted the attention of the media, lawmakers, professional organizations, and the public at large.

During the CSG West Virtual Annual Meeting, Carl Reynolds, Senior Legal and Policy Advisor at the CSG Justice Center, facilitated a conversation to discuss the many challenges and opportunities associated with bail reform. Jeff Clayton, Executive Director/Policy Director of the American Bail Coalition, argued that bail is meant to guarantee court appearances and not fix criminal problems.

California Senate Majority Leader Robert Hertzberg expressed a passionate claim against the cash bail system, while the Honorable Maryann C. Moreno, Washington State Superior Court Judge and Pretrial Reform Task Force member, promoted the importance of using data-driven strategies to safely reduce jail populations.

Bail reform advocates across California have argued against incarcerating someone simply because they can't post a cash bond. As a result, Senate Bill 10 (SB10) by Senator Bob Hertzberg and Assemblymember Rob Bonta [passed in 2018](#), which was signed into law by then-Governor Jerry Brown. The bill aims to replace the cash bail system with one that utilizes risk assessments.



Categorizing suspects as low, medium and high risk based on an evaluation of public safety risk, the assessment tool would help determine whether a person should be granted release pretrial, as well as the conditions of such a release.

The momentum of this legislation hit a major roadblock due to opposition from the bail bond industry who qualified and has financially backed a veto referendum. In November, Californians will vote on Proposition 25, the Replace Cash Bail with Risk Assessments Referendum, which requires voters to approve or reject SB10. The [coalition of members](#) opposing SB10 and sponsored by the American Bail Coalition, include entities such as Equal Justice Now, California Bail Agents Association, the California Black Chamber of Commerce, several sheriffs, district attorneys, elected officials and more.

Mr. Clayton, who has spearheaded the referendum against SB10, began his remarks during the session by stating that "today the 8th Amendment and state constitutional right to bail is under assault." He then illustrated current trends against preventative detention policies, pretrial risk assessments, offender-pay pretrial services, and bail reform activities in the West. Mr. Clayton reiterated that "SB10 is problematic" and introduced a fourth generation of bail reform which aims to purify the bail system as "a constitutional right, which sometimes requires security to guarantee an appearance."

Senator Hertzberg followed Mr. Claytons presentation by stating: "We are faced with special interest groups [and] our job is to look at public policy and pick the best path forward." He stated that SB10 was threatened with "million-dollar checks to overturn laws" and emphasized his belief that the cash bail is an unbelievably unfair and unjust system. Senator Hertzberg explained that many lives get turned upside down and added that awaiting trials from a jail cell can



result in job losses or even custody of children. With an average bail of \$50,000 in California, Senator Hertzberg declared that "rich people get out and poor people are stuck," underscoring the systemic, racial, and institutional challenges that need to be addressed.

Judge Moreno provided a brief history of the challenges in Spokane County, where the jail's [average daily population](#) has increased significantly since 2000. In recent years, the average daily population has been 919, with a capacity of 886. Adding to this challenge, in 2012, Spokane was faced with the closure of a jail. This threat of closure drew a team of judges, prosecutors, mental health providers, law enforcement, public defenders and community leaders together to determine whether jail population reduction could be addressed with reform to the local justice system. These efforts were further supported through the Safety and Justice Challenge Network and grant funding. In 2015 and 2019, Spokane received a [MacArthur Safety and Justice Challenge](#) grant which uses data-driven strategies to safely reduce jail populations, as well as racial and ethnic disparities. Judge Moreno expanded on a risk assessment tool used to provide insight and perspective to the judge's decision. Echoing Senator Hertzberg's sentiments, she commented on the devastating impacts of incarceration on individuals and the cycle it feeds which perpetuates criminal behavior. Judge Moreno suggested that any conversation around bail reform needs to be a robust discussion of system reform. "Certain individuals are dangerous and there is safety concerns" she added, "but most of the individuals commit low-level crimes and are unable to post bond."

[The U.S. incarcerates far more people than any other country in the world.](#) While the topic of bail reform is complex with many sides to explore, all of the session speakers agreed that rethinking incarceration as the sole means of those



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accused of a crime is necessary. To accomplish these efforts, key drivers including data-driven strategies, collaboration, and leadership must be addressed. Within the CSG organization, the [Justice Center](#) works in collaboration with states to provide insights and recommendations based on collected and analyzed data in an effort to support justice reforms.