

County of Santa Clara

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Jeffrey Rosen
District Attorney

June 4, 2018

The Honorable Robert M. Hertzberg
California State Senate
State Capitol
Room 4038
Sacramento, CA 95814-4900

Dear Senator Hertzberg:

California's bail system is broken. We can fix it. To do so, we need to fundamentally change our thinking about pretrial detention. Currently our system is overly focused on money. Those with money can almost invariably buy their way out of custody no matter how dangerous they are. By contrast, poor people often spend excessive time incarcerated because they cannot afford bail. This focus on wealth and indifference to poverty and public safety puts us all at risk. It also exacerbates the racial and class disparities endemic in our criminal justice system. We need to change this. We need a new system where we no longer focus on an individual's wealth, but instead focus on public safety and justice.

For this reason, I am happy to support your efforts with SB 10. This bill will put pre-trial risk assessment at the heart of our system, where it belongs. I know this can work because for more than 40 years, Santa Clara County has relied on risk assessment tools and a department of pre-trial services to provide invaluable information to prosecutors and courts who need to make release decisions. Non-financial conditions such as protective orders and GPS electronic monitoring can provide far superior safeguards for the public than cash bail. If non-financial conditions can protect the public, then there is no reason to insist on bail at all. It is true that in some cases these non-financial cases are insufficient to protect the public. When a defendant commits dangerous or violent crimes and presents a threat that cannot be addressed through these sorts of conditions, then paying bail doesn't make the community any safer. In these cases, the defendant should be detained. There is no reason to allow bail at all. As such, I cannot foresee any practical circumstances when bail is needed in the future.

Unfortunately, our current system holds people in custody who don't belong there just because they cannot afford to make bail. It releases some very dangerous people, particularly in the case of domestic violence, just because they can afford it. Protecting the public and making sure defendants do not flee are the only questions we should focus upon when releasing or detaining people pre-trial, not wealth.

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I believe that SB 10 will achieve two powerful goals: justice and safety. Recall, under our current system people of means are released every day without any common-sense conditions in place to protect the public. For example, under our current system a drunk driver who endangers everyone else on the road can be released, if he has money, without any provisions to prevent him from getting behind the wheel of a car. A man who beats his wife or molests his child can get out, if he has money, without any provisions to keep his family safe. My staff and yours, the Attorney General, as well as other proponents of the bill, are working together to make sure we come up with language for SB 10 that will allow prosecutors and the Court adequate tools to protect the public. I'm particularly committed to making sure that victims of domestic violence are adequately protected by this law, and that no batterer is released unless there are sufficient conditions in place that protect the victims. That having been said, I'm confident that we can arrive at just such language. Therefore, I'm gratified to support SB 10, and I look forward to working together on this legislation.

Sincerely,



Jeffrey F. Rosen,
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