Presented in Committee - June 28, 2017

SHERIFF'S ELECTRONIC MONITOR PROGRAM thru LCA:

Cost:

- Application of the monitor $125.00
- Daily fee, sliding scale ..... $20.00 to $35.00 per day
- Indigent with proof..... work SWAP, whole day, 5 days a week
- Student ..... Proof of school hours/ balance of day SWAP
- Dependant ..... Parents pay per sliding scale

Method of payment:

- Credit or Debit card, Cashier check or Money order
- **MUST PAY 2 WEEKS IN ADVANCE** – 26 PAY PERIOD PER YEAR

Payment calculations @ $20.00 per day:

- First visit..... $125 + 14 days = $405
- Half year ..... $125 + 182.5 days = $3,775
- One year ..... $125 + 365 days = $7,425
- Two years ..... $125 + 730 days = $14,725

Payment calculations @ $35.00 per day:

- First visit .....$125 + 14 days = $615
- Half year .....$125 +182.5 days = $6,512.5
- One year .....$125 + 365 days = $12,900
- Two years .....$125 + 730 days = $25,675

Distribution of fees:

- % to LCA..... % to SF Sheriff's Department

***** SOME CASES RUN 2 TO 3 YEARS (PRETRIAL) *****

SURETY BAIL BOND AMOUNTS: *** **8 % FEE for the life of the case** (competition has lowered fees)

- $10,000..... $ 800
- $20,000..... $1,600
- $50,000..... $4,000 CAN BE FINANCED - INTEREST FREE

Law 360

Portfolio Media. Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Bail Reform Will Imperil California's Justice System

By **Quentin Kopp**

Quentin Kopp

Law360, New York (May 10, 2017, 11:53 AM EDT) -- With some exceptions, a criminal defendant in the state of California has a right to be released on bail by sufficient sureties. (Cal. Const., art. I, §§12, 28, subd. (e).) Every year more than 300,000 defendants choose to be released on bail in California. However, two bills seek to take this constitutional right away from defendants and replace it with an expensive and onerous pretrial release system.

Assembly Bill 42 and its companion legislation, Senate Bill 10, will abolish the current bail system and instead provide that: "Upon arrest and booking into a county jail, the pretrial services agency shall conduct a pretrial assessment on the person and prepare a report that contains recommendations for whether the person should be released without conditions or with the least restrictive condition or conditions."

The bills also repeal Penal Code §815a, thereby eliminating the ability of a judge to set bail when issuing an arrest warrant. Failing to appear for court or violation of other terms of a defendant's pretrial release will be a matter of mere civil contempt.

The bills further require a judge to release a defendant on a signed promise to appear, even if the pretrial services agency has failed to furnish a pretrial report to the judge indicating the likelihood the defendant will appear for future court proceedings or whether the defendant is a danger to public safety.

Shifting more than 300,000 defendants from privately funded bail to taxpayer-funded pretrial release programs will undoubtedly strain California's already underfunded court system.

Penal Code §825 requires that defendants in custody be arraigned in court within 48 hours of arrest. Since these bills repeal the bail schedule, the courts, and district attorney and public defender offices, will have to deal with 300,000 additional arraignments within 48 hours of arrest.

Furthermore, these bills require that if the arrest occurs on a Wednesday and Wednesday is a court holiday, the defendant shall be arraigned no later than Friday, and if Friday is a court holiday, the defendant must be arraigned no later than Thursday.

This will require the district attorney to review the police reports and make charging decisions within 24 hours of the defendant's arrest. Many more prosecutors and their support staff will need to be hired to perform this requirement.

The bills' authors ignore the fact that judges hold hearings after arraignment of a defendant which includes sworn testimony, oral arguments by prosecution and defense attorney and judicial fact-finding on whether a defendant should be released without bail (i.e., on his or her own recognizance).

No new bureaucracy must be created (as the authors would do) for judges to be such fact-finders. These bills demonstrate lack of fundamental knowledge of our criminal justice courts and existing

practices.

California Jail Population

The majority of people in jail, pending trial, are in jail because of non-financial reasons. They are either serving a sentence on another case, subject to a probation or parole violation or facing an immigration or arrest warrant retention.

In a 2012 study of the Los Angeles County jail system by the American Civil Liberties Union, the ACLU found that 87 percent of individuals who were in jail pending trial and unable to be released on bail were due to "non-financial holds."

County and Judicial Costs

In 2015, there were 1.1 million adults arrested in California. AB42 and SB10 contains an unfunded mandate requiring every county to establish a pretrial services agency that will have enough new employees and other resources to evaluate and prepare a pretrial risk assessment report for every defendant arrested, with certain exceptions.

Because this is an unfunded mandate, the pretrial services agency will suppress funding for other county programs and agencies like the district attorney's office, the public defender's office, the sheriff's office and mental health services.

Recently, New Jersey adopted a similar bail program, and its three-month old program is already estimated to cost over $450 million. AB42 and SB10 are based on the District of Columbia pretrial release system, which costs $65.2 million a year. It is important to note that New Jersey has a quarter of California's population (39 million) and the population of D.C. is only 670,000 people. If the D.C. system were used to serve California's population it would cost $3.78 billion per year.

In addition to the cost associated with running a seven-day-a-week "pretrial system," there is also the cost of monitoring hundreds of thousands of defendants who will be released onto the streets, the cost to the courts when a defendant fails to appear, and the cost of finding and arresting those who fail to appear.

A University of Texas study found the cost to the courts of each failure to appear in Dallas County was $1,775.00. (Morris, Robert G., "Pretrial Release Mechanisms in Dallas County, Texas: Differences in Failure to Appear, Recidivism/Pretrial Misconduct, and Associated Costs of FTA," The University of Texas at Dallas (2013), p. 2-3).

The California legislation's sponsors claim that "[t]he savings from holding fewer people in jail would more than cover the cost" of their proposed "pretrial service agency"; however, the savings are based on an erroneous assumption that 63 percent of defendants are in jail because they cannot afford bail.

In reality, most of these pretrial defendants are not eligible for bail or these bills' pretrial release programs because they have "holds" from other agencies or are serving a sentence for a previous conviction. The true number of pretrial defendants eligible for pretrial release is closer to 13 percent, according to the 2012 American Civil Liberties Union study of the Los Angeles County Jail system.

Many such defendants are released through the current bail system. Therefore, the authors' claimed savings will not materialize, but the state and counties will be stuck with the high new costs of implementing their legislation.

California's courts have already faced severe financial decreases over the past decade. The failure of adequate funding to cover costs has had a direct adverse effect on the public — longer wait times, reduced court hours and the closing of branch courthouses.

Governor Brown's proposed 2017-18 state budget allocates $2.79 billion to support trial court operations, yet our courts need an additional $158.5 million just to preserve existing service levels. By most conservative estimates, these bills will cost the state and counties an additional $2

billion to $4 billion each year.

AB42 and SB10 are Unconstitutional

These bills violate the defendant's right to bail by sufficient sureties, which, as noted above, is guaranteed by the California Constitution. Bail by sufficient sureties means a defendant must have the option to secure release through a bail bond posted by a commercial surety.

Several other high courts have considered identical phrasing in their state constitutions and have reached the same conclusion. State v. Barton 181 Wn.2d 148 (2014); State ex rel. Sylvester v. Neal, 140 Ohio St.3d 47, 2014-Ohio-2926; State v. Parker, 546 So.2d 186, 186 (La.1989); State v. Golden, 546 So.2d 501, 503 (La. Ct. App 1989); State v. Brooks, 604 N.W.2d 345, 352–53 (Minn.2000); State ex rel. Jones v. Hendon, 66 Ohio St.3d 115, 609 N.E.2d 541, 544 (1993)).

This legislation will force 300,000 defendants who can afford bail to sit in jail or to agree to onerous pretrial release conditions in order to be released.

Former United States Solicitor General Paul D. Clement commented last year on proposed changes to bail procedures in Maryland as follows:

> [E]liminating bail as a meaningful option, as this bill does, and substituting an invasive pretrial program which includes conditions like mandatory drug testing, GPS monitoring and onerous reporting requirements, would raise serious constitutional concerns, which are exacerbated if violations of pretrial conditions would create additional criminal exposure for the accused.
>
> The Ninth Circuit has held that, in some circumstances, such pretrial release conditions are unconstitutional. In United States v. Scott, 450 F.3d 863, 874 (9th Cir. 2005), the defendant agreed to submit to home searches and drug testing in order to obtain pretrial release. But when law enforcement conducted a home search and drug test of the defendant, the Ninth Circuit suppressed the results because these searches could not pass Fourth Amendment muster 'under any of the three [relevant] approaches: consent, special needs or totality of the circumstances.' Id.
>
> As an individual merely accused of a crime and presumed innocent, the defendant maintained Fourth Amendment rights that the government could not violate. Even the defendant's consent to the conditions of pretrial release could not render those conditions constitutionally legitimate because the government cannot impose 'unconstitutional conditions' in exchange for government benefits. Id. at 866 (citing Dolan v. City of Tigard, 512 U.S. 374 (1994))."

(Comments on Proposed Changes to Maryland Bail Procedures (Dec. 21, 2016).)

Pretrial Services Have a Poor Performance Record

According to "Not in it for Justice" by Human Rights Watch, Alameda County's pretrial services unit does a very poor job of locating and rearresting defendants released on their own recognizance, meaning without bail.

Human Rights Watch analyzed Alameda County Jail data for 2014 and 2015. During that time, 12,166 defendants were released on bail from jail after being in for a median of one day, while the 3,848 defendants released on OR spent a median of four days in jail and Alameda County's pretrial services unit only had to process one-third the number of defendants as those released on bail.

This is the system AB42 and SB10 would institute in all of California's 58 counties, where taxpayer-funded pretrial services will process one-third the number of defendants who spend four times longer in custody than under the current privately-funded bail system. It is irrational and dangerous.

Quentin L. Kopp is a retired San Mateo Superior Court Judge who served 12 years in the California State Senate and 15 years on the San Francisco County Board of Supervisors. He tried criminal and civil cases from 1956 until 1998. He lives and practices law in San Francisco.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.