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# Assessing the Impact of Bail on California's Jail Population

June 2013

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## Summary

Advocates of bail reform have argued that increases in bail levels and wide variation across counties discriminate against indigent and poor defendants and lead to overcrowded jails. Bail reform gained new momentum in 2011 when the Public Safety Realignment Act (known as “realignment”) took effect. In shifting responsibility for lower-level offenders from the state to the counties, realignment has increased concerns about overcrowding in county jails. It has also sharpened the focus on bail reform’s potential to reduce the unsentenced jail population, reduce county jail costs, provide low-risk indigent or poor arrestees a nonfinancial means of securing pretrial release, and make the bail system more equitable without unduly compromising public safety.

Over the past decade, California’s bail levels have increased by an average of 22 percent. But counties have not increased their bail schedules uniformly. In fact, some counties have not increased their bail schedules at all. This analysis estimates that a 31 percent drop in the statewide average bail level, which equates to a \$10,000 decrease, would result in a 4 percentage point reduction in the share of unsentenced inmates. Given the statewide unsentenced average daily population (ADP) in the year before realignment (50,472), this would translate to 2,843 fewer unsentenced inmates statewide. An alternate measure, using the number of unsentenced inmates per 100,000 residents, yields similar results. The same 31 percent drop in bail would result in an estimated drop of 7 unsentenced inmates per 100,000 residents, or 2,666 inmates statewide. However, these results are driven largely by the most populous counties (and particularly Los Angeles). This suggests that legislative proposals aimed at reducing bail amounts and making them more uniform across the state for the purpose of reducing the number of unsentenced jail inmates may not be widely effective. Reductions in bail are most likely to be effective in counties that rely heavily on bail as a means of pretrial release and that adhere closely to the scheduled bail amounts.

The analysis also finds wide variation in bail levels across counties. However, the variation is not correlated with the size of the unsentenced population. This supports the conclusion that reduction in bail amounts across the board may not be the most promising approach for addressing jail overcrowding statewide. But it also suggests that to the extent that judges default to the bail schedule rather than basing bail or pretrial release on an individualized evaluation of risk, reducing bail and increasing uniformity across the state could address pretrial release equity issues. However, these reforms might well achieve greater equity at the expense of public safety without the simultaneous expansion of pretrial programs that effectively identify low-risk defendants for reduced bail, own-recognition release, or conditional release.

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# Introduction

In response to a 2009 three-judge panel mandate later upheld by U.S. Supreme Court, California implemented the Public Safety Realignment Act (AB 109/AB 117) in 2011. Commonly referred to as realignment, this legislation sought to reduce California's prison population by tens of thousands of inmates by creating and funding a new community-based corrections system whereby management of lower-level offenders shifted from the state to the county level. This report focuses on the realignment-related issue of jail overcrowding and more specifically on the reinvigorated debate over California's bail and pretrial system.

Realignment had an immediate impact on jails, as a new class of low-level felony offenders who would formerly have served their terms of incarceration in state prison began serving their in-custody time in county jails.<sup>1</sup> These offenders include both those newly convicted of a nonviolent, nonsexual, nonserious offense (non-non-nons)<sup>2</sup> and, with some exceptions, those who violate the terms of their parole or probation. This expansion of jail-eligible offenders, combined with the end of the one-year cap on jail sentences, has raised fears that realignment may resolve the state's prison overcrowding problem by re-creating it at the county level (Simon 2011; Schlanger 2013).

A more optimistic view of realignment's potential impact on jails rests partially on the fact that, unlike prisons, jails hold some inmates who are either awaiting trial or sentencing. In the 1980s, 50 percent of inmates were unsentenced. The share began to rise in the 1990s, and by the time realignment took effect it stood at 71 percent (Corrections Standard Authority 2002; Lofstrom and Kramer 2012). Bail reform advocates have attributed this increase at least partly to rising bail amounts.<sup>3</sup> These same advocates assert that many unsentenced inmates are in California's jails not because they pose a high risk of flight or a threat to public safety, but simply because they lack the financial resources to post bail (Hopper, Dooley-Sammuli, and Evans 2012; Heller de Leon 2012).

As California confronts new jail population pressures, reform of the bail system and implementation of bail alternatives have become increasingly attractive. These reforms hold the promise of easing jail overcrowding, lowering county jail costs, providing low-risk indigent or poor arrestees a nonfinancial means of securing pretrial release, and making bail schedules more equitable across counties without unduly compromising public safety.

Although realignment emphasizes county discretion, several statewide bail reform measures have been proposed since the passage of AB 109. Senate Bill (SB) 968, introduced in the 2011–12 legislative session, would have allowed pretrial felony defendants charged with non-non-non offenses to apply for release on a bail amount reduced by up to 75 percent.<sup>4</sup> If released, defendants would have been obligated to participate in an electronic monitoring program pending trial. SB 210, introduced in the current session, is another bill that focuses on the same population of pretrial defendants. It seeks to expand the use of pretrial risk-assessment tools to identify defendants eligible for pretrial release, either on their own recognizance or with conditions that would preserve public safety and ensure their appearance in court.

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<sup>1</sup> Under realignment, judges may sentence a convicted low-level felon to a sentence of the same length that they would have served in prison, a split sentence with a shorter jail term followed by a period of mandatory supervision, or a community-based alternative.

<sup>2</sup> Those who committed a non-non-non offense after October 1, 2011, but have also been convicted of a prior serious or violent felony or must register as sex offenders remain prison-eligible.

<sup>3</sup> Other factors cited are the court's lack of information regarding public safety risk of defendants and limited authority of sheriffs to address the overcrowding issue (Hopper, Dooley-Sammuli, and Evans 2012).

<sup>4</sup> SB 968 Bill Analysis April 24, 2012.

Assembly Bill (AB) 1118, which seeks to standardize bail schedules across counties and make bail more affordable, was also introduced in the current session. AB 1118 would mandate that the Judicial Council of California prepare a uniform statewide bail schedule.<sup>5</sup>

While the immediate argument for reform is that repeated increases to the county bail schedules have exacerbated jail overcrowding and reduced jail space for convicted felons,<sup>6</sup> reform efforts also focus on the issue of equity. In the case of SB 210, the expansion of pretrial release options based on risk rather than on the financial resources needed to make bail would lead to more equitable treatment of the poor. AB 1118 would move California toward a more uniform bail schedule across counties and promote reductions in bail amounts, increasing the equitability across counties with respect to bail and pretrial detention.<sup>7</sup>

Support for the idea that jail overcrowding might be alleviated by reductions in bail is supported by national studies showing that pretrial release rates decrease as bail amounts increase (Cohen and Reaves 2007). But there has not yet been a systematic study of bail and the relationship between bail schedules and pretrial jail populations in California. This report aims to provide state policymakers with objective information as they consider reforms to the bail system. It examines the levels, variation, and trends of bail schedules in California and then assesses the relationship between bail and unsentenced jail populations, estimating the potential statewide impact of reductions in bail on the unsentenced jail population.

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<sup>5</sup> AB 1118 as amended May 24, 2013.

<sup>6</sup> See the Author's Statement in SB 210 Bill Analysis, July 3, 2012 ([www.leginfo.ca.gov/pub/11-12/bill/sen/sb\\_0201-0250/sb\\_210\\_cfa\\_20120702\\_100001\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0201-0250/sb_210_cfa_20120702_100001_asm_comm.html)); Hopper, Dooley-Sammuli, and Evans 2012; and the Author's Statement in AB 1118 Bill Analysis, April 16, 2013.

<sup>7</sup> The important issue of whether realignment will result in equitable sentencing and access to treatment across the 58 counties has been raised, (Petersillia and Snyder 2013), but the equitability across counties with respect to bail and pretrial detention is also an open question.

# Bail and Pretrial Release in California

## The Bail System

Bail operates as a financial guarantee to the court that defendants will appear for all mandated court hearings. Unless they are charged with a capital offense, most defendants have the right to release on bail.<sup>8</sup> However, a judge may curtail the right to bail in cases where a felony defendant has threatened great bodily harm to another or where the defendant is facing a violent felony or felony sexual assault charge.<sup>9</sup> Also ineligible for release on bail are defendants placed on a parole or immigration hold and defendants arrested on extradition warrants.<sup>10</sup>

Under California law, the superior court judges of each county are responsible for preparing, adopting, and annually revising a uniform countywide bail schedule.<sup>11</sup> The bail schedule contains a list of statutory offenses and a presumptive bail amount for each offense. Because judges adopt the bail schedule outside of the context of a particular case, the presumptive bail amounts are based on the seriousness of the offense.<sup>12</sup> Although judges have discretion to raise or lower the scheduled bail amount on the cases before them, it is the responsibility of a law enforcement officer to apply the scheduled bail amount upon taking an arrestee into custody.

Once a defendant appears in court, generally within 48 hours, the judge may adjust the scheduled bail amount. While judges have broad discretion in setting bail, they may not do so with the intent of punishing the defendant, nor can they impose excessive bail, which has been interpreted to mean bail that is unreasonably great, and clearly disproportionate to the offense. Currently, in setting bail a judge must consider the following: safety of the victim, victim's family, and the public; the seriousness of the offense charged; the previous criminal record of the defendant; and the probability the defendant will appear for all mandated court hearings (Administrative Office of the Courts 2013; Karnow 2008).

This emphasis on public safety is relatively new. Prior to 2008, the California Constitution mandated only that in fixing bail, the court take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing (Deering's 2008). With the passage of The Victims' Bill of Rights Act of 2008, article I, § 28(f)(3) was added to the California Constitution, mandating that in setting bail or own-recognizance release, the protection of the public and the safety of the victim shall be the primary considerations (Deering's 2013).

If a defendant does not have sufficient funds to post bail, he or she may secure release by contracting with a bail agent who will post a bond for the full bail amount. For this service, the bail agent generally charges the defendant a non-refundable fee amounting to 10 percent of the full bail amount. The bond is a financial guarantee to the court that the defendant will appear for all mandated hearings. If the defendant fails to appear

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<sup>8</sup> Penal code section 1271.

<sup>9</sup> The California Constitution curtails the right to bail in noncapital offenses under the following conditions: (1) If the defendant is charged with a violent felony, a felony sexual assault when the facts are evident or the presumption great and the court finds, based on clear and convincing evidence, that there is substantial likelihood the person's release would result in great bodily harm to others; (2) If the defendant is charged with any felony when the facts are evident or the presumption great and the court finds, based on clear and convincing evidence, that the person has threatened another with great bodily injury and there is substantial likelihood that the defendant will carry out the threat if released (Administrative Office of the Courts 2013).

<sup>10</sup> Administrative Office of the Courts (2013).

<sup>11</sup> Penal Code Section 1269b.

<sup>12</sup> Penal Code Section 1269b(e) states that judges, in considering the seriousness of the offense, shall add bail amounts for each aggravating or enhancing factor. Aggravating or enhancing factors are facts related to a specific charge. For example, a common enhancing factor is the personal use of a firearm during the commission of a crime. With regard to drug charges, the judge must also assign an additional amount of required bail for offenses involving large quantities of controlled substances.

for court, and the agent cannot locate and return the defendant to court, bail is forfeited, leaving the bail agent liable for the full bond amount. Bail agents may mitigate this risk by securing the bond with collateral from the arrestee or from the arrestee's family or friends.

## Alternatives to Bail

If the judge believes that a defendant can be relied upon to return to court and that release will not compromise public safety, the judge may grant a request for an "own-recognizance" (OR) release. In this case, the defendant signs a release agreement promising to appear at all required court hearings in lieu of posting bail. Before granting an OR release, the judge must evaluate the defendant's flight risk by considering the defendant's ties to the community, whether the defendant has a past record of failures to appear in court, and the possible sentence the defendant faces if convicted. The judge must also evaluate risk to public safety by considering any threats that have been made by the defendant, as well as any record of violent acts (Administrative Office of the Courts 2013).

In counties with active pretrial programs, the judge may consider pretrial reports and recommendations based on interviews and evaluations that assess the defendant's public safety and flight risk. For example, in Marin County, the county probation department contracts with an independent agency that provides pretrial services. Using an evidence-based pretrial risk-assessment tool, agency staff evaluates eligible defendants along three dimensions: criminal history, employment and residential stability, and drug use. Following a verification process and an evaluation of danger to self or others, the agency prepares a recommendation along with a report. After approval by the probation department, the report is submitted to the court (Aungst 2012). In addition to supplying the court with recommendations and reports, these programs may also offer a range of conditional release options. These release options may include release on electronic monitoring, release with alcohol monitoring, or release to home detention.

If pretrial release is not granted and bail is fixed by the court, realignment legislation also permits the sheriff to authorize the pretrial release of inmates. Under the legislation, a county board of supervisors must first designate the sheriff as the county's correctional administrator and may then authorize the correctional administrator to place pretrial jail inmates who do not pose a significant threat to public safety in an electronic monitoring program when specified conditions are met.<sup>13</sup>

In some instances, an unsentenced jail inmate who has not posted bail may be released due to jail overcrowding. At implementation of realignment, 17 counties were operating under court orders that limit the number of inmates they can hold at one or more of their county facilities. Statewide, in the year before realignment, the average annual jail population was 71,060, and releases due to lack of capacity numbered 6,800 per month for unsentenced inmates and 3,900 per month for sentenced offenders (Lofstrom and Kramer 2012). The number of emergency releases and the ratio of sentenced and unsentenced releases vary by county. Lofstrom and Kramer (2012) found that in the year before realignment Los Angeles reported releases of about 1,600 sentenced offenders and 300 unsentenced inmates per month, while San Bernardino released 2,430 inmates per month, all unsentenced. These releases vary by county at least in part because, county- and facility-specific consent decrees and court orders differ in the discretion they afford sheriffs over their booking and release policies. Not surprisingly, testimony from at least one California sheriff indicates a preference for defendants being released on bail, as opposed to being released due to jail overcrowding.<sup>14</sup>

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<sup>13</sup> Penal Code § 1203.018.

<sup>14</sup> Testimony submitted to the Little Hoover Commission by Margaret Mims, Fresno County Sheriff, November 7, 2012. The testimony cites the absence of incentives to appear in court when defendants are released due to overcrowding and states both that those released on bail are less likely to fail to appear in court and that bond agents are helpful in discouraging flight.

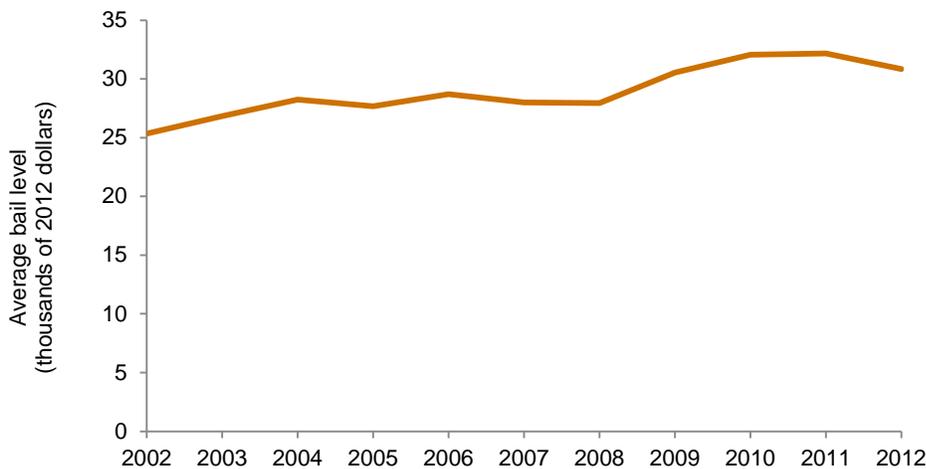
# County Bail Trends and the Unsentenced Jail Population

This section of the report examines changes in bail since 2002, assesses the relationship between bail amounts and the number and share of unsentenced jail inmates, and estimates the statewide impact of bail reductions on the unsentenced population.

## Bail Trends

From 2002 to 2012, county bail levels for some of the most frequently committed felony offenses increased by an inflation-adjusted 22 percent. However, the increase was not uniform across counties—in fact, Marin, San Mateo, Contra Costa, and Riverside registered declines in average bail levels. In 2002, the inflation-adjusted statewide average bail was about \$26,000. It rose to \$34,000 in 2011 before dropping to \$32,000 in 2012. Figure 1 illustrates this change in average bail levels over the decade. Data for Figure 1 are drawn from the 12 counties that were able to provide annual bail schedules from 2002 forward: Los Angeles, San Bernardino, Riverside, San Diego, Orange, Marin, Alameda, Solano, Tulare, San Mateo, San Luis Obispo, and Contra Costa. Together these counties account for two-thirds of the state’s population and are broadly representative of the state in terms of demographic and economic characteristics.<sup>15</sup>

**FIGURE 1**  
The real average bail level for felonies increased by 22 percent from 2002 to 2012



SOURCE: Author’s calculations using annual bail schedules for Los Angeles, San Bernardino, Riverside, San Diego, Orange, Marin, Alameda, Solano, Tulare, San Mateo, San Luis Obispo, and Contra Costa counties.

NOTE: The figure presents the average bail levels, weighted by offense frequency, for the 12 counties. See [Technical Appendix A](#) for details.

County bail level was calculated by taking the scheduled bail amounts of the most common offenses in California (listed in [Technical Appendix A](#)), weighting each offense by its frequency and then calculating an average bail level for each county. It is important to note that the average bail level for each county provides a measure of how high the scheduled bail amounts are across a range of common offenses.

<sup>15</sup> [Technical Appendix A](#) shows that this sample is representative of the state along a range of dimensions.

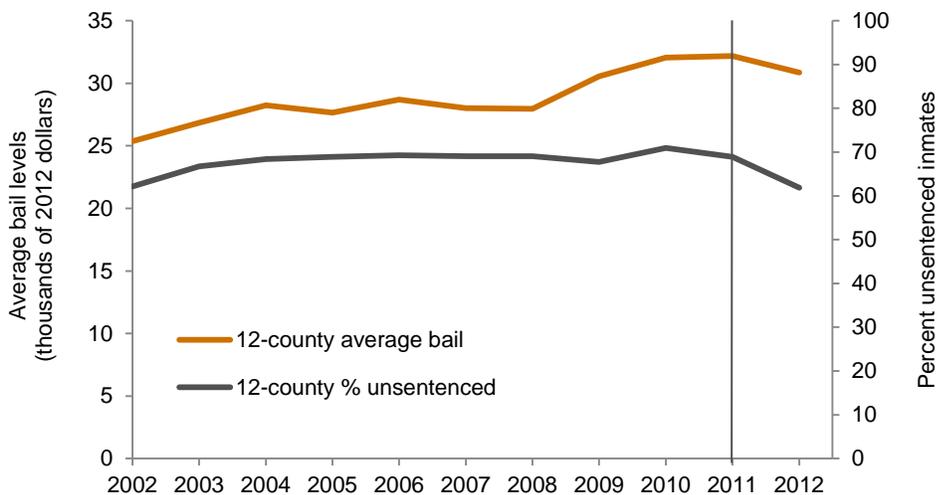
The average bail level for a county does not necessarily reflect the average amount of bail a defendant would pay to secure release.<sup>16</sup>

## Impact on the Unsentenced Jail Population

The relationship between bail trends and the unsentenced jail population must be examined on a statewide level because data limitations do not allow a county-by-county approach. This analysis uses data from 2002 to 2010 to exclude the confounding influence of realignment. The unsentenced population is measured as both a share of the overall jail population and as the number of unsentenced inmates per 100,000 residents. The share of unsentenced inmates is an imperfect measure because it is influenced by changes unrelated to bail,<sup>17</sup> but is a frequently reported figure and is seen as a key factor in the design of jail safety procedures by jail administrators (Corrections Standard Authority 2002).<sup>18</sup>

Figures 2a and 2b illustrate how the trends in average bail level track with changes in the percent of unsentenced jail inmates and with the number of unsentenced inmates per 100,000 residents.

**FIGURE 2A**  
Before realignment, there was no strong relationship between bail levels and the share of unsentenced jail inmates



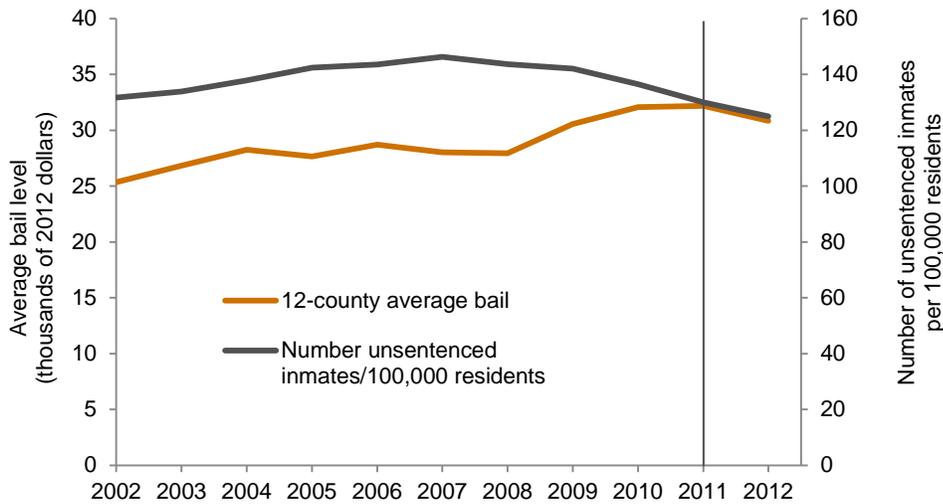
<sup>16</sup> Bail may deviate from scheduled amounts in instances where public defenders request lowered bail for their clients, the prosecution does not raise objections, and judges grants the reduced bail amounts. Data on the extent to which actual bail deviates from scheduled amounts is not collected.

<sup>17</sup> For example, in Los Angeles, there was a sharp increase in the number of sentenced inmates in the first six months of 2012. This sharp increase drove the percent of unsentenced inmates down, even while the absolute number of unsentenced inmates declined only slightly.

<sup>18</sup> Unsentenced jail inmates are generally assigned higher security classifications and require additional resources associated with transportation for court appearances and meetings with legal representatives (Corrections Standard Authority 2002).

**FIGURE 2B**

**Before realignment, there was no strong relationship between bail levels and the number of unsentenced jail inmates per 100,000 residents**



SOURCES: Unsentenced inmate share and number: author's calculations using Jail Profile Survey, January 2002–June 2012, and U.S. Census Bureau Census, County Population Estimates. Average bail: author calculations using annual bail schedules for 12 counties (Los Angeles, San Bernardino, Riverside, San Diego, Orange, Marin, Alameda, Solano, Tulare, San Mateo, San Luis Obispo, and Contra Costa). See [Technical Appendix A](#) for details.

NOTES: Data for 2012 are averaged monthly data for the first six months of 2012. The vertical line at 2011 represents year of realignment onset.

The analysis employs both population-weighted models, in which the more populous counties exert a greater influence over the results, and unweighted models, in which each county exerts equal influence. Both models were run twice: first including and then excluding Los Angeles. The models control for the effects of county crime rates, ratios of ADP to capacity, and emergency release rates—because these vary widely by county.<sup>19</sup>

Statewide, the results suggest that a \$10,000 decrease in the average bail level would result in a 4 percentage point decrease in the share of unsentenced inmates and a decrease of 7 unsentenced inmates per 100,000 residents. In other words, had average bail decreased by \$10,000 across the state between 2010 and 2011, (from \$32,000 to \$22,000), these results suggest that the unsentenced share of the jail population would have dropped from 71 to 67 percent.<sup>20</sup> Given that the average statewide unsentenced ADP in the year before realignment was 50,472, a 4 percentage point decrease represents a decline in the unsentenced population of 5.6 percent, which translates to 2,843 fewer unsentenced inmates. Given a California population estimate of 38 million, a decrease of 7 inmates per 100,000 residents would translate to 2,666 fewer unsentenced inmates statewide.

While this analysis yields a positive effect of bail on the number and the share of unsentenced inmates, it has its limitations. A significant effect of bail could not be detected in the unweighted results, and no significant

<sup>19</sup> The model also includes county fixed effects that control for all other county-specific factors that do not change over the period analyzed. For full regression results, see [Technical Appendix B](#).

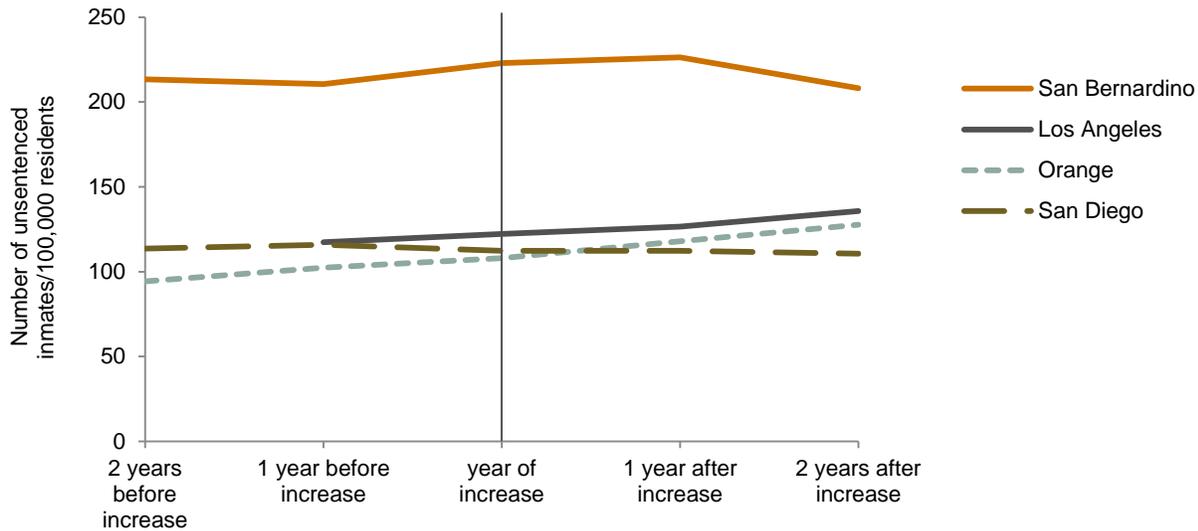
<sup>20</sup> The \$10,000 decrease in bail amounts to a 31 percent change. This magnitude of change is on the lower end of changes observed in the trend data. For example, the average bail level for San Bernardino jumped by 62 percent from 2008 to 2009 and for Los Angeles, a 28 percent jump occurred from 2002 to 2003.

effect could be detected in the weighted models with Los Angeles excluded.<sup>21</sup> This suggests that the impact of bail on the unsentenced population is not uniform across counties, and that the relationship between bail schedules and the size of the unsentenced populations in the larger counties, especially Los Angeles, is the primary driver of the statewide result.

These results indicate that while a decrease in bail could potentially result in a decrease of the unsentenced population in Los Angeles, its impact on the other 11 counties is unclear. A direct examination of the actual change in the number of unsentenced inmates per 100,000 residents associated with actual county-specific increases in average bail helps illustrate the difficulty of detecting the impact of bail in the unweighted models and in models that exclude Los Angeles.

Figures 3a and 3b illustrate responses to significant increases (25% or greater) in bail that occurred in four large counties (San Bernardino, Los Angeles, Orange, and San Diego) and two small counties (San Luis Obispo and Tulare). Figure 3a presents results for the four largest counties in the sample, showing that with the exception of San Diego, the number of unsentenced inmates per 100,000 residents increased, albeit marginally, after a significant jump in the county-specific average scheduled bail. Figure 3b illustrates the same relationship for the two smaller counties, illustrating no change or a decline in the number of unsentenced inmates per 100,000 residents after significant jumps in average bail.<sup>22</sup>

**FIGURE 3A**  
**In most large counties, the number of unsentenced jail inmates per 100,000 residents inched up after bail increases**

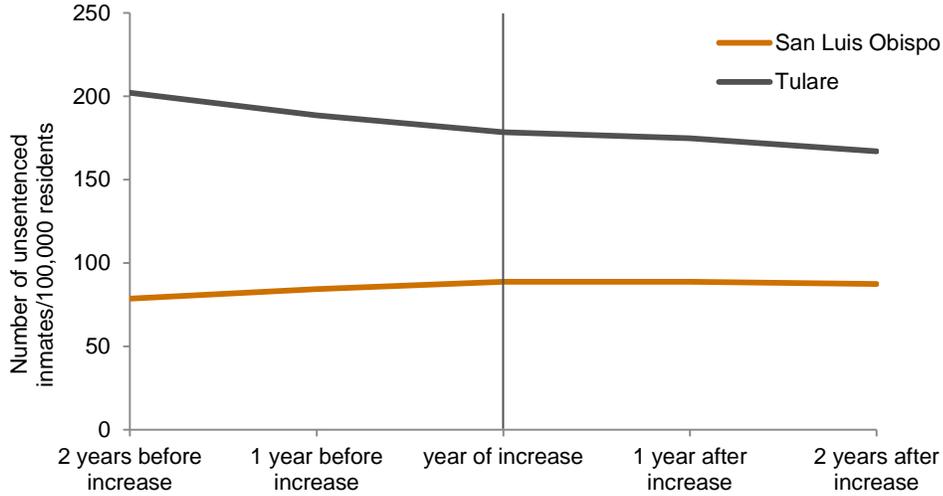


<sup>21</sup> Excluding Los Angeles from the analysis reduces the sample size, which results in a loss of precision in estimating the impact of bail on the smaller counties. This may account for the lack of significance when Los Angeles was excluded from the model.

<sup>22</sup> There were significant jumps in bail in Alameda and Solano counties, but these were excluded because they occurred in 2010, only one year before realignment. Bail schedule changes in the other sample counties (Marin, San Mateo, Contra Costa, and Riverside) did not reach the 25 percent threshold.

**FIGURE 3B**

**In smaller counties, the number of unsentenced jail inmates per 100,000 residents remained relatively flat or declined after bail increases**



SOURCE: Annual bail schedules for Los Angeles, Orange, San Bernardino, San Diego, San Luis Obispo, and Tulare.

NOTE: Data are plotted for the following counties and years: Los Angeles 2002–2005; Orange 2003–2007; San Bernardino 2007–2011; San Diego 2004–2008; San Luis Obispo 2004–08; Tulare 2006–10.

In light of the variation in the relationship between bail and the unsentenced population, along with the sensitivity of the regression analysis to weighting and to the exclusion of Los Angeles, an examination of pretrial factors that may diminish the impact of bail might prove useful.

## Pretrial Factors Diminishing the Impact of Bail on the Unsentenced Jail Population

Pretrial programs that result in release or bail reduction are clearly related to the numbers of unsentenced jail inmates, but the lack of comparable county data limits our understanding of their impact across counties. Pretrial data tend to come from evaluations of specific county programs that vary in approach and scale.

For example, using data from 2007 and 2008, the final report on the Los Angeles County Jail Reduction Project found very low rates of pretrial release: 51 percent of all people booked in 2007 and 2008 remained in custody through disposition (Vera Institute 2011). Judicial officers who participated in the study reported a tendency to default to the scheduled bail amount when setting bail due to a lack of individualized information on defendants. This lack of individualized information is not surprising, given the report’s finding that less than 10 percent of individuals booked into custody were reviewed for possible pretrial release. These findings help to explain the sensitivity of the regression analysis to the exclusion of Los Angeles: the county’s heavy reliance on the bail schedule combined with the limited number of pretrial releases meant that few factors were present to diminish the relationship between scheduled bail and the unsentenced jail population.

On the state level, the best data source for examining the frequency of the various types of pretrial releases comes from the Bureau of Justice Statistics, State Court Processing Statistics (SCPS).<sup>23</sup> A California-specific

<sup>23</sup> The SCPS includes a sizable sample from California drawn from Alameda, Contra Costa, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, and Santa Clara counties. However, the sample is insufficient for county-level studies.

analysis of the SCPS by the Legislative Analyst’s Office (LAO) using data from 2000–04 suggests that 21 percent of felony jail inmates secure a financial release, most commonly through a bail bond, and nearly the same share (20%) secure a nonfinancial release. Unfortunately, the SCPS categorizes both releases granted by judges and those granted by law enforcement as nonfinancial releases, obscuring the contribution that each type of release makes from county to county. While a judge in one county may grant many own- recognizance or conditional releases, another county may rely more on “citation releases” in which arrestees are released pending their first court appearance on a written order issued by law enforcement or jail personnel.

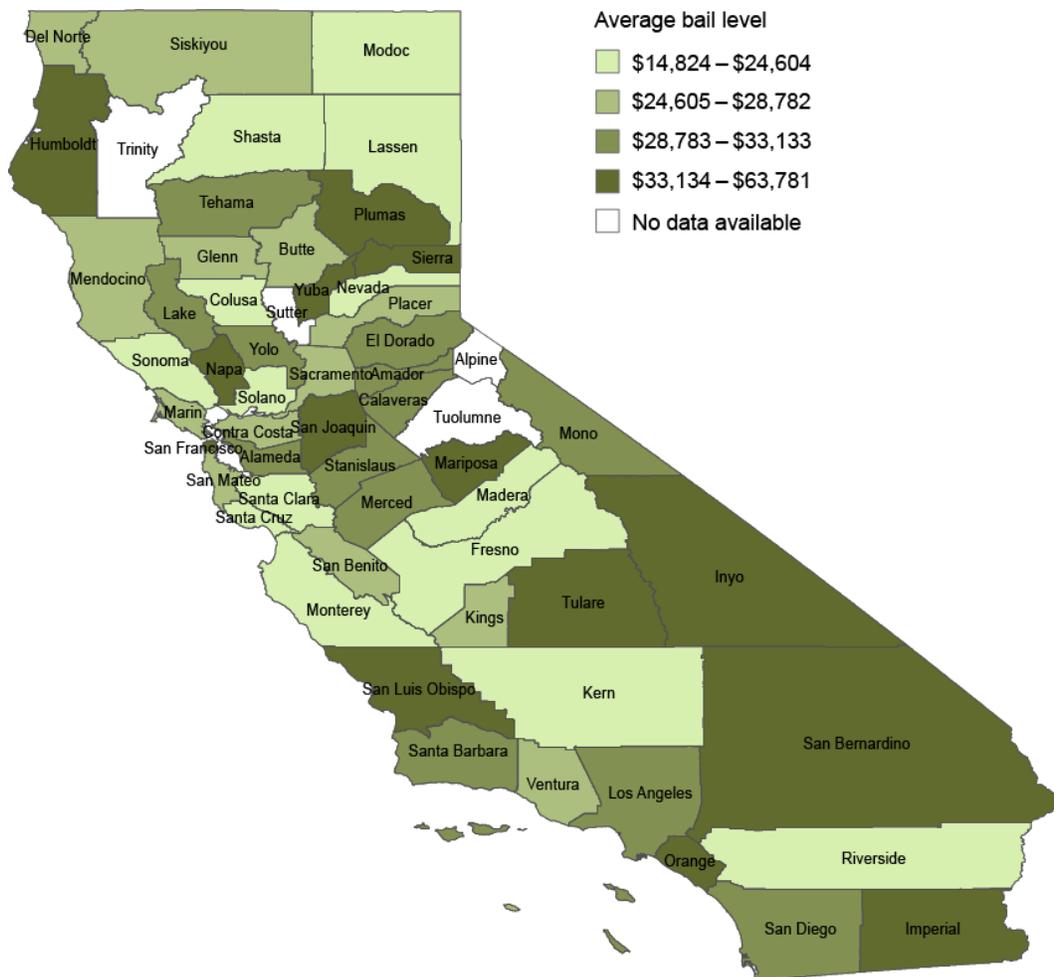
SCPS does provide data on actual bail amounts and offense types, but the offenses are aggregated in a way that precludes analysis of the frequency with which judges deviate from the scheduled bail amounts for various offenses.

# Variation in Current Bail Levels

The trend data presented above provide a statewide perspective on the relationship between bail levels and unsentenced jail populations, but these data do not help us assess the claims that the current bail system is unfair. In order to assess the argument that the current bail system results in unfair treatment, the next section examines current levels of bail and differences in bail levels across counties.

Recent legislative proposals aimed at reducing scheduled bail amounts and making them more uniform across counties cite differences in scheduled bail amounts, and the data supports these claims (Figure 4). The variation illustrated in Figure 4 also provides some context for evaluating the range of impact that SB 968 would have had on counties. Recall that SB 968 proposed pretrial release on electronic monitoring for some offenders in combination with bail amounts reduced by up to 75 percent. Figure 4 shows that the lowest average bail is \$14,824. Rounding up to \$15,000 and applying a 75 percent reduction would bring the bail amount down to \$3,750. The highest average bail shown in Figure 4 is \$63,781. Rounding the bail up to \$64,000 and applying the same reduction would result in a bail amount of \$16,000.

**FIGURE 4**  
Average bail levels in 2012 varied widely across California



SOURCE: Author’s calculations using 2012 annual bail schedules for all counties except Trinity, Sutter, Alpine, and Tuolumne.

The county variation in bail levels defies easy explanation. For example, the relationship between total crimes rates and average bail levels is extremely weak, as is the relationship between bail levels and region.<sup>24</sup> Bail levels in the adjacent Inland Empire counties of Riverside and San Bernardino are widely disparate. Similarly, in the San Joaquin Valley, Kern is among the counties with the lowest bail levels, while neighboring Tulare County is among those with the highest bail levels. Similarly, San Francisco Bay Area counties span the range of bail levels. County wealth—as measured by median household income—is also a poor predictor of bail levels.<sup>25</sup> In fact, the five counties (Santa Clara, San Mateo, Marin, Contra Costa, and Ventura) with the highest median incomes have the same average bail (\$27,000) as the five counties (Imperial, Lake, Del Norte, Siskiyou, and Modoc) with the lowest median incomes.

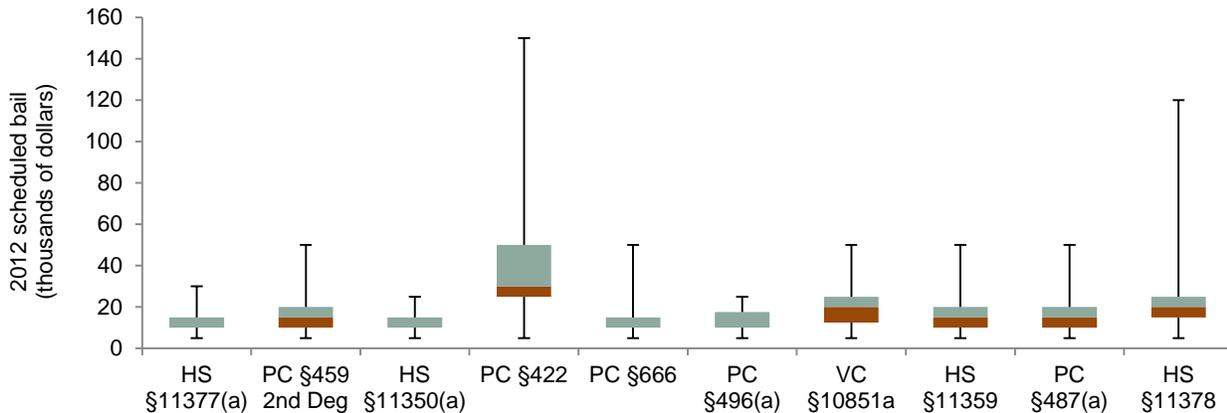
Although data relating current variation in county bail schedules to the percent of unsentenced jail inmates are confounded by the impacts of realignment, the data indicate that average bail levels are not consistently related to the number or share of unsentenced jail inmates after realignment.<sup>26</sup>

Our analysis of the trend data and the point-in-time data across counties presented above suggest that creating a statewide uniform bail schedule and reducing bail levels specifically to alleviate jail overcrowding is not likely to have a uniform effect across all counties. However, such a change would address equity concerns by making bail more affordable to the poor and by making the cost of securing pretrial release through a bail agent more similar from county to county. The magnitude of the impact of such a change would differ based on the current cross-county variation of scheduled bail for a particular offense.

## County Variation in Bail by Offense

Figure 5 shows the range of bail amounts for some of the most common felony offenses. Table 1 provides a key to the Penal, Health and Safety, and Vehicle Code sections presented in Figure 5.

**FIGURE 5**  
Counties vary widely in scheduled bail for common felony offenses



SOURCE: Author’s calculations using 2012 annual bail schedules for all counties except Trinity, Alpine, and Tuolumne.

NOTES: Error bars represent end points of the range, and boxed areas represent the bounds of the second (orange) and third (blue) quartiles. Where orange box is not visible, all values in the second quartile are clustered at the median value. Reported bail for drug offenses is the scheduled bail amount associated with the smallest specified quantity.

<sup>24</sup> The relationship between average bail and total crime rate is very low with a Pearson correlation coefficient  $r=.021$ . The correlation coefficients are similarly low if the violent crime rate ( $r=.033$ ) or the property crime rate ( $r=.020$ ) is substituted for the total crime rate (see [Technical Appendix C](#)).

<sup>25</sup> The relationship between average bail and median household income as measured by the Pearson’s correlation coefficient is  $r=.021$ . (See [Technical Appendix C](#) for data tables.)

<sup>26</sup> See [Technical Appendix C](#).

**TABLE 1**  
Code section key to common offenses

Code	Code section	Description	Offense type
Health & Safety	11377(a)	Possession of a controlled substance (most commonly methamphetamine)	non-non-non
Penal	459	Burglary (2 <sup>nd</sup> Degree)	non-non-non
Health & Safety	11350(a)	Possession of a controlled substance/narcotics (most commonly cocaine)	non-non-non
Penal	422	Criminal threats	strike/serious felony
Penal	666	Petty theft with priors	non-non-non
Penal	496(A)	Receiving stolen property \$400+	non-non-non
Vehicle	10851(A)	Vehicle theft	non-non-non
Health & Safety	11359	Possession of marijuana for sale	non-non-non
Penal	487(A)	Grand theft \$400+	non-non-non
Health & Safety	11378	Possession of a controlled substance for sale (most commonly methamphetamine)	non-non-non

SOURCE: Offender Based Transaction System, 2009.

NOTES: Under the California Three Strikes law passed in 1994, a defendant obtains a strike if convicted of a crime that is classified as either a serious or a violent felony. For the definition of a serious felony see PC§1192.7(c). For the definition of a violent felony, see PC §667.5(c).

For all ten offenses shown in Figure 5, the lowest bail amount is \$5,000. Even in the narrowest bail range—\$5,000 to \$25,000, for PC §496 (receiving stolen property) and HS §11350(a) (most commonly cocaine possession)—the highest bail amount for these charges is five times higher than the lowest bail amount. This gap is small compared with the range for the two offenses with the highest maximum bail amounts. For example, the highest bail amount (\$150,000) for PC §422 (criminal threats) is 30 times higher than the lowest bail amount (\$5,000). Similarly, the highest bail for HS §11378 (methamphetamine possession for sale) is \$120,000, 24 times as much as the lowest bail amount \$5,000.

The county variation in judicial discretion over bail schedules can be observed by comparing bail for methamphetamine possession (the most commonly charged drug under Health & Safety code §11377(a)) and methamphetamine possession for sale (the most commonly charged drug under Health & Safety code §11378). Despite the fact that these offenses carry the same maximum sentence, bail for the former offense ranges from \$5,000 to \$30,000, while bail for the latter ranges from \$5,000 to \$120,000. Counties such as Napa and San Joaquin set bail much higher when this charge moves beyond possession (HS §11377(a)) into possession for sale (HS §11378). For example, in Napa County bail for methamphetamine possession is \$10,000 (placing it at the low end of the county bail range), whereas methamphetamine possession for sale carries a bail of \$100,000 (placing it at the highest end). Conversely, Marin, Riverside, and Solano counties set the same bail for both of these offenses. In fact, with few exceptions, Solano County bases bail on the maximum possible sentence, in this instance, setting bail at \$15,000 for both of these offenses because they carry a maximum term of three years.<sup>27</sup>

The wide range in scheduled bail amounts set under Penal Code §422 (criminal threats) may reflect differences in the severity of the offense as well as local differences in prosecutorial behavior. Criminal threats

<sup>27</sup> If the schedule does not list all offenses specifically, it shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedule (Penal Code Section 1269b(f)).

differs from the other offenses examined here: it is a prison-eligible offense rather than a realigned or non-non-offense. A felony conviction on a criminal threats charge is not only classified as a serious felony, it also counts as a “strike” under California’s Three Strikes Law.<sup>28</sup> Moreover, criminal threats may be alleged in a broad array of case types, ranging from domestic violence to gang activity.

To the extent that judges default to the scheduled bail amounts when setting bail rather than considering the flight and public safety risk of each individual, a narrowing of differences in scheduled bail amounts across the state would reduce the differential financial impact that defendants currently face when charged with the same offense in different counties. For example, a defendant charged with cocaine possession (HS §11350(a)) in San Diego County would currently pay a \$500 premium to contract with a bond agent to secure release on a \$5,000 bail amount. Meanwhile, a defendant charged with the same offense in Humboldt County would have to pay a bail agent \$2,500 to secure release on a \$25,000 bail amount. If bail schedules were made uniform from county to county, bail-eligible defendants charged with comparable offenses would be more likely to pay similar amounts to secure release.

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<sup>28</sup> The California “Three Strikes and You’re Out” law was passed in 1994. The main feature of the law is the imposition of a life sentence for any felony conviction if the defendant has two prior “serious” felony convictions. Before modification by California Proposition 36 (passed in 2012), a third strike in the original law could be any felony, including simple drug possession. With a few exceptions, Proposition 36 revised the law to impose a life sentence only when the new felony conviction (third strike) is “serious” or “violent” felony as defined by California statute.

# Conclusion

In making the case for bail reform, advocates have emphasized the impact of large numbers of unsentenced inmates on county jail populations, the financial impact of bail increases on poor and indigent defendants, and the equity issues raised by wide county-to-county variations in bail levels. The findings outlined in this report support many of the claims about the current system, but it is difficult to assess the potential impact of state-level reform in all California counties.

On average, California's bail levels have increased over the past decade by 22 percent, but counties have not increased their bail schedules uniformly. Estimates based on data from 2002 to 2010 suggest that on average a \$10,000 decrease in the state's average bail level would result in a decrease of 7 unsentenced inmates per 100,000 residents. This effect was strongly driven by the most populous counties (Los Angeles in particular), where prior research indicates that bail closely adheres to bail schedules. This suggests that while reform efforts aimed at reducing average scheduled bail levels and making them uniform across the state are likely to reduce jail overcrowding in some large counties, the potential impact is unclear in smaller counties.

To the extent that judges default to county bail schedules rather than basing bail or pretrial release on individual evaluations of flight and public safety, proposals aimed at reducing bail and increasing uniformity would address equity concerns. Bail-eligible defendants charged with the same offense would pay comparable bail regardless of their location, and poorer defendants would be able to afford bail and secure release. However, in addition to reducing the state prison population, the goals of realignment are to reduce recidivism and rely less on incarceration while reducing criminal justice costs and protecting public safety. The implementation of a uniform bail schedule with reduced bail amounts may lead to greater equity and ease jail overcrowding in some counties. But without expanded pretrial programs that effectively identify low-risk defendants for own-recognition or conditional release, equity might come at the expense of public safety.

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## Acknowledgments

The author would like to acknowledge Magnus Lofstrom for his generous contributions to this work. The report benefited from the comments and feedback of Mia Bird, Harlan Grossman, Ryken Grattet, Steve Raphael, and Ellen Hanak; constructive reviews by Tor Tarantola, David Ball, and Adam Christianson; and the editorial expertise of Lynette Ubois, Mary Severance, and Kate Reber. The author also thanks the court staff who compiled and submitted bail schedules for this project. The author bears sole responsibility for any remaining errors or omissions.

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