



BAIL SCHEDULES AND PRE-ARRAIGNMENT RELEASE PROTOCOLS

EFFECTIVE OCTOBER 1, 2023

FREQUENTLY ASKED QUESTIONS

1. What is bail?

Bail is a set of conditions, also called sureties, that are imposed on eligible arrestees that must be met to be released from jail. These conditions can be financial or non-financial. Financial conditions include an amount of money paid by or on behalf of an arrestee to the court, intended to ensure the individual returns to court. Non-financial conditions include: attending all court appearances; prohibitions against committing new crimes, such as committing violence, use or sale of controlled substances and driving while intoxicated; pre-arraignment monitoring; text reminders of court dates; and check-ins with pre-arraignment staff. Individuals released on bail are required to comply with the conditions to remain out of jail pending resolution of their case. The California Constitution's Bill of Rights prohibits excessive amounts of bail.

2. What is the purpose of bail?

The purpose of bail is:

- 1) to ensure an arrestee appears for all future court appearances and
- 2) to reduce the risk to public or victim safety.

In the United States, all arrestees are presumed innocent until proven guilty beyond a reasonable doubt. The California Constitution further entitles most arrestees to be released on bail while awaiting trial.

The United States Supreme Court has long held that "liberty is the norm, and detention prior to trial is the carefully limited exception."

Under both the California and United States Constitutions, bail is not a punishment. It is a mechanism - financial or otherwise - to ensure future court appearances and protect public and victim safety.

3. Are there some arrestees who are not eligible for bail?

Article 1, Section 12, of the California Constitution says some arrestees cannot be released on bail by sufficient sureties. Those include individuals charged with any of the following case types:

- 1) capital crimes where the death penalty is authorized and the facts are evident or the presumption of guilt is great;
- 2) violent felonies committed against another person, or felony sexual assault offenses where the facts are evident or the presumption of guilt is great and there is a substantial likelihood that the person's release would result in great bodily harm to others; or
- 3) felonies where the person has threatened another with great bodily harm and there is a substantial likelihood that the person would carry out the threat if released.



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4. How does the Court determine which crimes are serious or violent?

Serious or violent crimes are legally defined by statutes as determined by the Legislature. (Penal Code, § 1270.1(a)(1).) Serious crimes are listed in Penal Code sections 1192.7(c) and 1192.8; violent crimes are listed in Penal Code section 667.5(c).

5. What are “bail schedules,” and how are the new schedules effective October 1 different from previous bail schedules?

Law enforcement uses the bail schedules, which are court orders, to know the conditions under which a person may be released from jail prior to arraignment.

Traditionally, bail schedules have included only financial conditions of release or a dollar amount assigned to all crimes. An arrestee could pay the dollar amount or a percentage of the amount, directly to the court to obtain their release from custody. Under these circumstances, arrestees get their money back once the case is resolved. Alternatively, an arrestee can use a bond company to secure their release during the time between their arrest and arraignment. The dollar amount of bail in a traditional bail schedule was not determined based on the arrestee’s individual risk of flight or risk to the community. Rather, it was a preset amount based on the alleged crime. If the arrestee could not afford the amount of bail set, the arrestee remained jailed prior to their arraignment. For those arrestees that could not afford the financial condition, that meant sitting in jail for up to 48 hours (longer if their arrest fell during a holiday or weekend) before they were considered for release at arraignment. For those arrestees who could afford the financial condition, they were released regardless of the risk they posed.

The new bail schedules, effective October 1, include new Pre-Arraignment Release Protocols, which, rather than assigning a dollar amount to all crimes, assign **non-financial** release conditions for most non-violent, non-serious offenses **prior to arraignment**. The non-financial release conditions are tailored to the arrestee after a review by a magistrate who conducts an individualized determination of the arrestee’s flight risk and risk to the community to establish the appropriate conditions. Due to statutory restrictions, crimes outlined in Penal Code section 1270.1, which includes most serious and violent felonies and domestic violence crimes, will remain subject to traditional bail amounts.

All release conditions of the arrestee are then reconsidered at arraignment by the judge presiding over the arraignment.



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6. What authority does the Court have to make these changes?

California Penal Code Section 1269b requires local superior courts to set uniform bail schedules for their respective counties. The Court must set release conditions for each offense, but those conditions can include a financial condition such as zero dollars (\$0), or non-financial conditions as a judge deems appropriate.

The Court also has the authority to set reasonable conditions, which include non-financial conditions, on persons released on bail to ensure the appearance of the arrestee or in the interest of public safety.

7. What are the pre-arraignment release categories under the new protocols?

Under the new bail schedules, which include within them Pre-Arraignment Release Protocols, all persons arrested in Los Angeles County after October 1, 2023, will fall into one of five categories:

Cite and Release (CR) – For many non-violent, non-serious offenses, arrestees will be cited and released at the location of arrest with a promise to appear in court. This authority is not new, and law enforcement has been citing and releasing individuals for most alleged offenses based on their own internal policies for many years. For offenses designated as CR in the schedule, law enforcement will have the authority to cite and release an individual in the field or to book them into a law enforcement facility prior to their release. This is a decision that is left to the law enforcement officer. Unless there is an exception or enhancement, individuals booked into jail for an offense designated as CR will be released from jail on \$0 bail with a promise to appear in court.

Book and Release (BR) – For many non-violent, non-serious offenses, law enforcement will book arrestees into a law enforcement facility. Unless there is an exception or enhancement, individuals booked into jail for an offense designated as BR will be released on \$0 bail with a promise to appear in court.

Magistrate Review (MR) – For certain non-violent, non-serious offenses that pose a greater risk to the public (i.e., violence against children or seniors, crimes involving firearms, sexual battery), for non-violent, non-serious felonies committed by a person on Post-Release Community Supervision or parole, or for CR/BR offenses where there is an exception or enhancement, arrestees will be referred to a magistrate to make an individualized determination of appropriate non-financial conditions of release sufficient to ensure the arrestee's appearance in court and to minimize the likelihood of the arrestee committing new crimes pending trial. These individuals will be released from jail on \$0 bail plus non-financial conditions of release, if any, as determined by the magistrate and with which the arrestee must comply. Until and unless the magistrate determines the non-financial conditions of release, the individual is not entitled to be released on \$0 bail.



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The magistrate may also defer release consideration until arraignment if the magistrate finds by clear and convincing evidence based on the available information that "public or victim safety, or the arrestee's appearance in court, cannot be reasonably assured" by releasing the person with nonfinancial conditions at that time.

Magistrates are available seven days a week, 24 hours a day.

Money Bail – A person arrested for an offense involving domestic violence, or nearly all serious or violent felonies, are not eligible for non-financial conditions of release prior to arraignment pursuant to state law. Persons arrested for these offenses remain eligible for release only on money bail amounts prior to arraignment. The amounts for the monetary bail are set forth in the bail schedules and vary based on the alleged offense.

Not Eligible for Release – For capital offenses or certain felonies designated in the California Constitution and Penal Code section 1270.5, individuals are not eligible for release and may be detained in jail prior to trial.

8. Are there instances where monetary bail will apply to non-serious, non-violent offenses?

Non-serious, non-violent offenses are all assigned non-financial conditions of release in the bail schedules. However, there are exceptions that may change the category assigned to the alleged offense.

- If an individual arrested for an offense designated as CR or BR in the bail schedule is on felony probation, parole or post-release community supervision, an exception will apply, and the arrest will be referred to a magistrate for review of the appropriate terms of release.
- If an individual is arrested for certain offenses in Penal Code section 1319.5(b)(2) who have 3 or more failures to appear in other recent criminal cases, an exception will apply, and the arrestee will be referred to a magistrate for review of the appropriate terms of release.
- If an individual is arrested for an offense designated as CR, BR, or MR in the bail schedule and for an offense that has a designated monetary amount of bail in the bail schedule, the monetary amount of bail will apply.

In some instances, an arrest may also include an enhancement that, by law, must be assigned a monetary bail amount. Examples of these enhancements include, but are not limited to, offenses committed for the benefit of a gang, use of a weapon during the offense, and offenses committed while the arrestee has other pending felony charges. Each enhancement has a monetary amount of bail associated with it. If an individual is arrested for an offense that is designated as CR, BR, or MR and law enforcement alleges an enhancement with a monetary bail amount, the monetary amount of bail will apply and the arrestee will not be subject to magistrate review unless statutorily eligible for release on his or her own recognizance.



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9. What are the benefits of the new Pre-Arrestment Release Protocols?

For non-violent, non-serious offenses, the new bail schedules include Pre-Arrestment Release Protocols, which base an arrestee's release from custody on individual risk, i.e., upon their likelihood of returning to court, or their likelihood of committing a new crime before trial. They do not base an arrestee's access to freedom prior to conviction solely on their ability to pay money bail and, therefore, provide equal and fair access to justice rather than pretrial freedom for only those with financial resources. Research shows that jailing someone pretrial simply because they cannot afford the amount of money bail decreases public safety and results in increases in failures to appear at court.

They also ensure an individualized determination of an arrestees' risk to public and victim safety and likelihood of returning to court, something that the current bail system, which rises and falls on a person's access to financial resources, does not. Research has shown that individualized determinations, with tailored conditions, reduce rearrest and rebooking for new misdemeanor and felony offenses and decrease failures to appear at court.

Finally, making risk-based release and detention decisions at the earliest possible point in the pre-arrestment process allows individuals accused of a crime, who remain innocent until proven guilty, to maintain employment, housing, access to medical care, and the support of their families while they defend themselves.

10. Why do the new protocols apply only to pre-arrestment release?

Under the state and federal constitution, arrestment is considered to be the first critical stage of criminal proceedings. At arrestment, judges hear information from prosecutors and defense attorneys that may enable the judge to reconsider the arrestee's release conditions.

Regardless of the point in the process, judges are required to set the least restrictive terms of release necessary to ensure the arrestee's appearance in court and the safety of the community and victim.

11. Why is the Court making this change now?

The Court has been modifying and refining its pre-arrestment release protocols for several years. In 2020, the Court adopted the PREP program that allowed the Court to make individualized risk-based release decisions for certain arrestees. During the pandemic, the Court adopted an Emergency Bail Schedule (EBS) pursuant to the Judicial Council's Emergency Rules Related to the COVID-19 Pandemic. Recently, a court order issued in a recent case (*Urquidi v. City of Los Angeles*, LASC Case No. 22STCP04044) found the traditional bail schedules as applied unconstitutional and prohibited only the two largest law enforcement agencies in Los Angeles County (LAPD and LASD) from applying the traditional bail schedules. This has resulted in inconsistent pre-arrestment enforcement of bail within Los Angeles County. This inequality has created confusion and complexities for law enforcement agencies in Los Angeles County.



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Based on the Court’s experience in modifying the pre-arraignment release protocols, the experience under the EBS, what extensive scholarly research has shown about pre-arraignment decisions, the recent court decision in the Urquidi matter that has resulted in non-uniform pre-arraignment release decisions in Los Angeles County, and the experience of many other courts statewide and nationwide that have adopted innovative pretrial release protocols, the Court proposed an updated pre-arraignment release protocol for misdemeanor and low-level, non-serious, non-violent offenses that takes into account all that we have learned to improve public and victim safety, ensure the appearance of the arrestee at court, and ensure that low-risk individuals are not being detained unnecessarily.

12. Can law enforcement request a different type of bail based on information that they have about the arrestee?

Pursuant to California Penal Code sections 1269c and the bail schedules, Law Enforcement Agencies (LEAs) may request an “upward bail deviation” to increase the amount of money bail or to elevate the designated protocol (e.g., CR/BR to MR) when a peace officer believes the amount of money bail set forth in the bail schedules or the designated protocol is insufficient to secure the arrestee’s future court appearance or to ensure the interest of public and victim safety and must articulate facts and circumstances that support that belief. When a LEA requests an upward bail deviation, the magistrate will receive this information and consider it in connection with the magistrate’s determination of bail for that individual. Requests to increase the amount of money bail or to elevate the designated protocol may be made within two hours of booking.

13. Will the Pre-Arraignment Release Protocols result in decreased public safety in Los Angeles County?

No, in fact they are expected to do the opposite. A [recent report](#) to the California Legislature regarding the outcomes of pretrial pilot programs in California (including Los Angeles County) demonstrated that individualized risk determinations – which the new protocols employ – contribute to statistically significant decreases in rearrest and rebooking for misdemeanors and felonies.

Money bail, in addition to being inherently unfair to the poor, is also inherently unsafe in that it does not examine the arrestee’s risk to public or victim safety or the likelihood of the arrestee’s return to court. Anyone with money, regardless of how dangerous they are, can secure release on bail under the traditional bail schedule model.

The new bail schedules, which include Pre-Arraignment Release Protocols, will protect public safety by allowing magistrates to make individualized determinations of an arrestee’s risk to public and victim safety and likelihood of returning to court.



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14. If “money bail” is unconstitutional, why can it still be applied in some situations?

The Legislature mandates that certain crimes of a serious, violent and/or domestic violence nature be assigned a non-zero-dollar amount for bail. (Penal Code, § 1270.1(a)) In these cases, the Court is statutorily bound to follow that legislative mandate.

15. What non-financial release conditions will be applied by magistrates?

Magistrates will determine what non-financial conditions of release to impose, if any, on each arrestee. They may include requirements to attend all court appearances and prohibitions against committing new crimes, committing violence, use or sale of controlled substances and driving while intoxicated. They may also include pre-arraignment monitoring, text reminders of court dates, and check-ins with pre-arraignment staff.