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Proposition 25's Predicted Impact in San Francisco and Sonoma Counties

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In 2018, the California legislature passed **Senate Bill 10 (SB 10)** to end the practice of cash bail throughout the state. The law enacted other pretrial reforms, including requiring that counties use a validated risk assessment to inform pretrial release decisions, develop pretrial supervision programs, and release defendants unless detention is necessary for public safety or to guarantee appearance at trial. Implementation of the law has been stalled pending **Proposition 25**, a referendum on the ballot in November 2020. If the referendum passes and SB 10 is implemented, the law will significantly change pretrial practice throughout the state. However, there is little empirical evidence about how these changes to the pretrial system might affect release rates and jail populations.

In this brief, we use detailed data from two counties with different histories of pretrial reform — San Francisco and Sonoma — to estimate the potential effect of the law on release and detention prior to arraignment. To predict the possible effect of SB 10, we posit the following question: **If SB 10 had been in effect in 2017 and 2018, how would releases prior to arraignment have changed?**

IN SAN FRANCISCO AND SONOMA COUNTIES, WE FIND:

- Releases prior to arraignment will increase under SB 10 and people will spend less time in jail
- The majority of individuals who were released on bail in Sonoma County would be released prior to arraignment under SB 10
- SB 10 will increase release rates for Black individuals more than other groups, but disparities in release rates across racial and ethnic groups remain

CONTEXT & APPROACH

The potential effects of SB 10 will vary across counties due to differences in existing policies and practices. SB 10's effects will also be highly dependent on the Judicial Council's implementing guidelines and the local court rules that each jurisdiction will develop if the law takes effect. In this brief, we describe how the implementation of SB 10 may affect pretrial release in two counties with different existing pretrial systems: San Francisco and Sonoma.

In San Francisco, there are several reasons to believe that SB 10's effect on pre-arraignment release may be muted relative to other counties. The county has already implemented many of the pretrial policies that SB 10 would require to replace cash bail. For example, SB 10 requires implementation of a pretrial risk assessment, which San Francisco implemented in 2016. San Francisco also has policies in place for cite and release and for pre-arraignment release by the courts — known as a Duty Judge release — which facilitate the release of many lower risk defendants before arraignment. The pretrial assessments and supervision currently managed by a nonprofit, San Francisco Pretrial Diversion Project, would shift to the Adult Probation Department in 2025 under SB 10. San Francisco has further reduced its reliance on cash bail in 2020, with District Attorney Boudin announcing that prosecutors will no longer seek cash bail in criminal cases and the *Buffin* decision eliminating the pre-arraignment bail schedule.

In contrast, SB 10 is likely to have a larger and more notable impact on pretrial practices in Sonoma County. The Sonoma Sheriff's Office releases a number of cases immediately after booking with a citation. During the analysis period between 2015 and 2020, the Sheriff's Office conducted assessments on in-custody defendants for pretrial release using the Sonoma County Pretrial Risk Assessment tool (SPRAT), and the Probation Department conducted supervision and out-of-custody assessments. The SPRAT was used to guide arraignment release decisions and supervision levels. The county had no pre-arraignment release options aside from cash bail during the period of this analysis. This analysis estimates the impact of SB 10 had it gone into effect during this period.

Starting in July 2020, as part of the Judicial Council's Pretrial Pilot program, Sonoma County transitioned to using the same risk tool as San Francisco, the Public Safety Assessment (PSA) and the Probation Department assumed responsibility

for conducting all pre-trial risk assessments. While San Francisco and Sonoma use the PSA differently in guiding pretrial release decisions, following the transition to the PSA, pretrial case outcomes in Sonoma are likely to be more similar to those in San Francisco.

Analytic approach

To estimate the potential effect of SB 10 on pre-arraignment release, we use data on all cases booked into jail in 2017 and 2018 in Sonoma and San Francisco counties (see Appendix B). For each case, we identify the observed pretrial outcome: whether the defendant was cited and released immediately following booking, released by a duty judge prior to arraignment, released at or after arraignment, released on bail, or detained until case disposition. Citation releases occur the most quickly, while individuals can bail out of jail or be released to pretrial supervision at any point in the pretrial process, including after arraignment.

Our main analysis focuses on releases that occur prior to arraignment. We compare the observed pretrial outcome to our estimates of what would have happened in these cases if SB 10 had been in effect. The SB 10 release criteria are detailed in Appendix E, along with the assumptions we make in the analysis.

Jurisdictions will have limited discretion when determining pre-arraignment releases under SB 10. They will have the option to introduce a court-review process at the pre-arraignment release stage, which may facilitate release among some low- and medium-risk cases that would otherwise be detained until arraignment, and they will be able to select additional discretionary criteria when determining which cases

Pre-arraignment outcomes

Cite & release/book & release: eligible charges are cited and individual is released after fingerprinting and processing at the jail

Bail: individual pays amount specified on bail schedule or a lesser amount (typically ten percent with the backing of a bail bond agency) and is released

Release prior to arraignment: case is reviewed by a judge and individual is released

Detain prior to arraignment: individual is detained prior to arraignment

will be eligible for pre-arraignment release. We assume that San Francisco and Sonoma will not adopt any of the stricter, discretionary criteria for pre-arraignment release eligibility and that the counties will implement court-review processes for pre-arraignment release in keeping with current release practices. Determining what will happen at arraignment is more challenging under SB 10 because the law introduces several points of discretion that are difficult to model. For this reason, we do not attempt to estimate releases that will occur at or after arraignment under SB 10.

Our estimates are an upper bound of the number of cases that would be released prior to arraignment because of the assumptions we make about how San Francisco and Sonoma will implement the law and due to the fact that we cannot account for criminal justice contact that occurs outside of each specific county.

RESULTS

Finding 1: Releases prior to arraignment will increase under SB 10 and people will spend less time in jail

The predicted change in releases prior to arraignment that will occur under SB 10 vary by county, with release rates increasing by 3 or 15 percentage points, depending on the county. In San Francisco, the share of cases eligible for release prior to arraignment will increase under SB 10 (59% under SB 10, compared to 44% under existing law). This increase is mostly explained by arraignment releases that would be eligible for pre-arraignment release. In Sonoma, the change is predicted to be smaller: 66% of cases are predicted to be released, compared to 63% under existing law (Table 1).

We estimate that people will spend less time in jail prior to arraignment in Sonoma County under SB 10. Individuals in Sonoma will spend, on average, eleven fewer hours in jail prior to arraignment, largely driven by the fact that more than half of people detained until arraignment would be released prior to arraignment under SB 10, and would spend almost two fewer days in custody, on average (Figure 1). Approximately two-thirds of cases cited and released would be released later under SB 10, leading to an additional estimated seven hours in custody for that group. Cases released on bail at any point would largely be released prior to arraignment under SB 10, with little difference in the expected time in custody.

Of the approximately one-third of cases detained until arraignment, 15% would likely be released at arraignment (see Appendix G for full results).

In San Francisco, we predict only a minor change in the average amount of time spent in custody prior to arraignment overall. We do not expect to see a change in the pre-arraignment point of release for the majority of the sample (69%). Approximately one-third of the cases cited and released would be released later under SB 10, leading to an additional estimated nine hours in custody for that group (Figure 2). Releases to bail largely occurred prior to arraignment and we expect a large share of those cases will not be eligible for pre-arraignment release under SB 10, resulting in an average 17-hour increase in the predicted pre-arraignment time in custody. We do not expect substantial changes in the release point for cases released by the Duty Judge at pre-arraignment, thus we project only a small increase in the total number of hours in custody for that group. Lastly, we estimate that individuals held until arraignment will spend, on average, ten fewer hours in custody under SB 10 due to earlier releases (see full results in Appendix G).

TABLE 1: Actual and predicted outcomes prior to arraignment by county

OUTCOME PRIOR TO ARRAIGNMENT	SAN FRANCISCO		SONOMA	
	ACTUAL	SB 10 PREDICTED	ACTUAL	SB 10 PREDICTED
Percent released	44	59	63	66
Percent detained	56	41	37	34

Note: Release category includes cite and release, and mandatory pre-arraignment release. For full results, see Appendix G.

Source: San Francisco Sheriff and District Attorney, Sonoma County Sheriff and Probation Department.

FIGURE 1: Predicted and actual hours in custody, by actual release point in Sonoma County

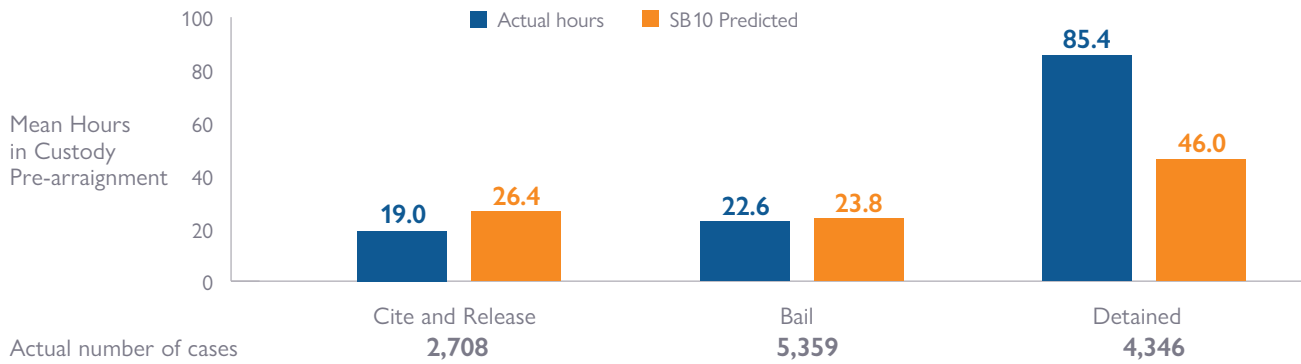
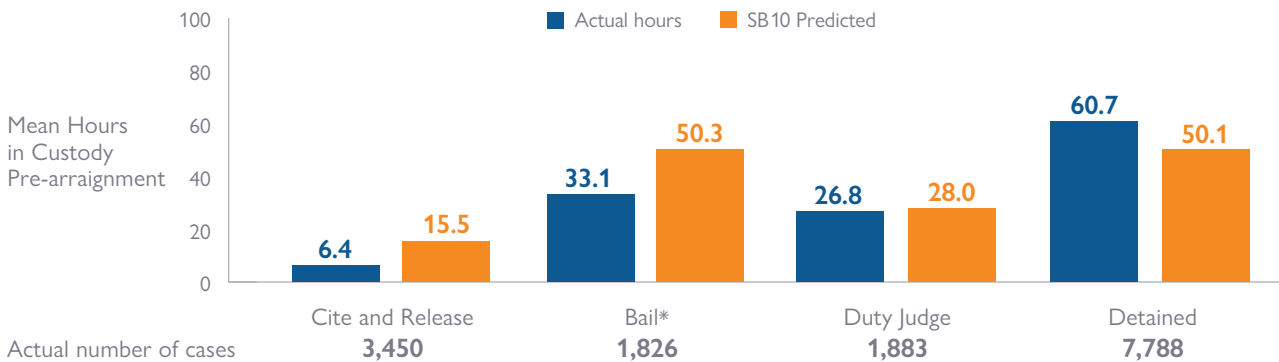


FIGURE 2: Predicted and actual hours in custody, by actual release point in San Francisco County



*Pre-arraignment releases on bail in 2017 and 2018. The pre-arraignment bail schedule is no longer in use in San Francisco as it was found unconstitutional under the *Buffin* decision.

In both San Francisco and Sonoma County, a larger proportion of individuals not assessed as high-risk would be released under SB 10 than under current law (Table 2). In Sonoma, 91% of these low-to-moderate risk individuals would be released prior to arraignment, compared to 65% under current law. In San Francisco, 85% would be released pre-arraignment compared to 57% currently. Under the SB 10 criteria, we assume that all individuals identified as high-risk would be detained until arraignment.

TABLE 2: Actual and predicted outcomes prior to arraignment by county and risk level

OUTCOME PRIOR TO ARRAIGNMENT	LOW-TO-MODERATE RISK		HIGH-RISK	
	ACTUAL	SB 10 PREDICTED	ACTUAL	SB 10 PREDICTED
SAN FRANCISCO				
Release	5,907 (57%)	8,881 (85%)	615 (13%)	0 (0%)
Detain	4,481 (43%)	1,507 (15%)	3,944 (87%)	4,599 (100%)
SONOMA				
Release	5,884 (65%)	8,161 (91%)	1,919 (56%)	0 (0%)
Detain	3,120 (35%)	843 (9%)	1,490 (44%)	3,409 (100%)

Note: High-risk is estimated by applying the PSA and each county's criteria for a high-risk individual. Low-to-moderate risk does not indicate that an individual has been identified as low-risk, but rather that they were not identified to be high-risk. In Sonoma, due to data limitations we estimate that we are under-identifying high-risk cases approximately 20% of the time based on the share of new bookings identified as high-risk by the PSA in the county's first months using the tool. We correct for this by re-classifying 20% of all cases not identified as high-risk to high-risk across the release distribution. The release category includes cite and release and mandatory and discretionary pre-arraignment release. In San Francisco, we use the actual release recommendation per the Decision-Making Framework (DMF) to determine if a person is high-risk or not. We estimate the DMF recommendation for approximately 5,000 cases in which the person was released before the PSA was scored.

Source: San Francisco Sheriff and District Attorney, Sonoma County Sheriff and Probation Department.

Finding 2: The majority of individuals who were released on bail in Sonoma County would be released prior to arraignment

Sonoma County was using bail at a much higher rate than San Francisco during the study period (43% compared to 12% of bookings). In Sonoma, we estimate 44% of individuals released on bail would have been released earlier through cite and release, 28% would have been released pre-arraignment, and 28% would have been detained until arraignment ([Table 3](#)).

In San Francisco, based on the pretrial risk tool, 55% of individuals released on bail were recommended for release, and 45% had the highest risk level and were release not recommended. Under SB 10, we predict that 3% of individuals released on bail would have been cited and released, 38% would have released pre-arraignment, and 59% would have been detained until arraignment.

TABLE 3: Predicted outcomes prior to arraignment for cases released on bail if SB 10 had been in effect

OUTCOME	SAN FRANCISCO		SONOMA	
	NUMBER	PERCENT	NUMBER	PERCENT
Cite & release	51	3	2,357	44
Pre-arraignment release	696	38	1,526	28
Pre-arraignment detention	1,079	59	1,476	26
Total	1,826	100	5,359	100

Note: In Sonoma County, 95% of releases on bail are released within 92 hours of booking (the median time that someone released to Pretrial Services at arraignment spent in custody). In San Francisco, approximately 65% of cases released on bail are released prior to arraignment. The median length of stay for all releases on bail is 17.3 hours and the average is 262.9 hours (approximately 11 days).

Source: San Francisco Sheriff and District Attorney, Sonoma County Sheriff and Probation Department.

Finding 3: SB 10 will increase release rates for Black individuals more than other groups, but disparities in release rates across racial and ethnic groups will remain

Systemic racism has contributed to more frequent interactions with the justice system for Black individuals throughout the United States. Racial and ethnic disparities are present in the criminal justice systems of both San Francisco and Sonoma counties, including their pretrial systems. Black individuals are more than ten percentage points less likely to be released prior to arraignment than White and Latinx individuals in both counties (Table 4). SB 10 was not designed to address racial and ethnic disparities in the pretrial system, though by standardizing part of the release decision one might have expected the law to reduce racial and ethnic disparities in pretrial release. Our analysis shows that SB 10 would have moderate effects on relative release rates between racial and ethnic groups in San Francisco or Sonoma.

In both counties, we estimate that releases will increase across all racial and ethnic groups, with a substantial increase in the share of Black individuals who are released prior to arraignment. However, under SB 10, Black individuals would continue to be between seven to ten percentage points less likely to be released prior to arraignment than Latinx and White individuals. This analysis does not explore the cause of disparities in release rates, but Black individuals in both counties are more likely to have factors that make them ineligible for pre-arraignment release. Specifically, Black individuals are more likely to be assessed as high-risk, have a prior violation of a pretrial release condition, have a pending case at the time of their booking, and be booked on a serious or violent felony than Latinx and White individuals.

TABLE 4: Actual and predicted outcomes prior to arraignment by county and race and ethnicity

OUTCOME	BLACK		LATINX		WHITE	
	ACTUAL	PREDICTED UNDER SB 10	ACTUAL	PREDICTED UNDER SB 10	ACTUAL	PREDICTED UNDER SB 10
SAN FRANCISCO						
Release	1,942 (35%)	2,946 (53%)	1,771 (52%)	2,202 (64%)	2,125 (46%)	2,954 (64%)
Detain	3,624 (65%)	2,620 (47%)	1,650 (48%)	1,219 (36%)	2,523 (54%)	1,694 (36%)
SONOMA						
Release	302 (52%)	345 (60%)	2,326 (66%)	2,385 (68%)	3,920 (64%)	4,063 (67%)
Detain	276 (48%)	233 (40%)	1,197 (34%)	1,187 (32%)	2,158 (36%)	2,015 (33%)

Note: Release category includes cite and release, and mandatory and discretionary pre-arraignment release. Race/ethnicity groups are mutually exclusive; White category is non-Hispanic White.

Source: San Francisco Sheriff and District Attorney, Sonoma County Sheriff and Probation Department.

IMPLICATIONS FOR CALIFORNIA

SB 10 aims to end a system of cash bail that disproportionately incarcerates individuals who are unable to afford bail before a determination of guilt has been made. Pretrial detention is consequential: being detained increases the likelihood that individuals will be convicted, increases recidivism in the two years following conviction, contributes to racial and ethnic disparities in sentences², and decreases employment and benefit receipt.³

We evaluate the potential effects of SB 10 on pre-arraignment release and detention in two counties – San Francisco and Sonoma – to provide information to counties throughout California about what to expect should Proposition 25 pass in November 2020.

We find that even in counties with strong histories of pretrial reform, pre-arraignment releases will likely increase following the implementation of SB 10. In Sonoma, this increase in

releases corresponds with a decline in jail time of over eleven hours, on average. We predict the increase in releases will be concentrated among lower risk defendants, while a larger share of defendants assessed as high-risk may be detained prior to arraignment. For those held in detention until arraignment, we estimate that roughly 15% will be released at arraignment or shortly thereafter, because they are not eligible for a preventive detention hearing. In reality, we expect the release rate at arraignment to be much higher, if preventive detention is not requested in all eligible cases. It is difficult to predict how and to what extent each county may use preventive detention hearings as SB 10 grants a large amount of prosecutorial discretion. In San Francisco, the majority of cases that meet one or more of the preventive detention criteria (66%) were released prior to disposition on their own recognizance or to supervision, 18% were released on cash bail, and 16% were detained for the pretrial period. The most common reason someone would be eligible for a preventive detention hearing is being arrested for a violent crime against a person, driven by robbery and assault with a deadly weapon charges (SB 10 Section 1320.18(a)(1)).

The potential effect of SB 10 will vary based on each county's implementation decisions, including the selection of a risk assessment tool and the definition of high-risk. While risk assessment tools are intended to counteract bias introduced by points of discretion in the justice system, they are not bias-free or race-neutral and must be used with care and caution. It is imperative that risk assessment validations, which are required by law in California ([Senate Bill 36](#)), assess outcomes by racial and ethnic groups and gender to track any disparate effects of the tool, report these results publicly, and allow for adjustments. In the counties we examined, we predict that release rates for all racial and ethnic groups will

increase, but we do not expect the legislation will remedy the existing disparities in release rates across racial and ethnic groups. Regardless of whether Proposition 25 passes or fails in November 2020, other policy approaches are needed to address the disparate pretrial detention of Black Californians.

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Endnotes

- 1 Leslie, E., & Pope, N. G. (2017). The unintended impact of pretrial detention on case outcomes: Evidence from New York City arraignments. *The Journal of Law and Economics*, 60(3), 529–57.
- 2 Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, 108(2), 201–40.