

California counties revamping bail policies

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Some California counties are changing long-held policies about who must remain in jail while awaiting trial, allowing judges to free criminal defendants based not on whether they can afford bail but whether they're a risk to public safety.

Public policy experts say the shift is overdue, given the crowded conditions at many county jails and a new law that is filling them with convicts who in the past would have served time in state prisons.

"The majority of prisoners in California county jails are in fact pretrial detainees - they are not there to be punished for a crime, but rather they are there because they can't meet the (financial) conditions set by the court," said Tim Murray of the Pretrial Justice Institute, a nonprofit that offers technical assistance and training on pretrial processes to law enforcement agencies across the nation.

"When a release is based on cash rather than risk, you start from a deficit in terms of public safety and the administration of justice," he said. "It creates two classes of the accused: those who can afford to pay and those who cannot. And those who can't pay are not being held because they are scarier."

So instead of basing a person's release solely on their ability to pay a bail amount, some counties are allowing law enforcement authorities - often probation officers - to conduct pretrial risk assessments. The tests gauge a person's likelihood of committing another crime if they are released and are increasingly being used as a tool to help judges decide whether a person should stay in jail while awaiting trial.

Some counties use the assessments as an alternative to bail, while others use the tests to help decide the bail amount.

In Placer County, the tests have kept more convicted criminals behind bars. In 2007, Placer officials released 4,700 convicted criminals before the offenders had completed their sentences due to crowding. Most of the jail beds were being taken up by defendants awaiting trial.

Last year, several years after deciding to go to a risk-based policy, Placer County officials released only 480 convicted criminals early, a nearly 90 percent drop.

Jails full statewide

In that county, accused criminals cleared for release are not asked to post bail, but instead are supervised by probation officers as they await trial, the same way they would be if they were on probation.

In 2010, 70 percent of California jail beds were taken up by people awaiting trial, according to the most recent figures from the state Department of Corrections and Rehabilitation.

At the same time, 32 of the state's 58 counties have court orders capping the number of inmates they can house. Offenders can wait months - or sometimes more than a year - for their trials if they waive their right to a speedy trial, as most do.

The problem of jailhouse crowding could be exacerbated as counties absorb thousands of low-level offenders that in the past would have served their time in state prisons but are staying at local jails under Gov. [Jerry Brown's](#) realignment plan.

Placer County Probation chief Marshall Hopper said having a pretrial policy has helped both law enforcement and the accused.

"There are conditions of release, and we can conduct home visits to allow structure and supervision when a case is pending in court," he said. "It gives judges another tool when they are making a release decision about who looks like a good candidate, keeping in mind that the No. 1 priority is public safety."

It's good for those charged with a crime, Hopper said, because they can "remain at home with their families and keep their jobs" and because it allows the accused to prove to the court they are on the right track even before trial.

Making a good guess

"On the flip side, if they perform poorly, we take them back to jail and the court knows about it," he said. "We want to make sure we keep the people in jail that need to be there, and keep people of lesser risk in the community under the right structure and supervision."

Not everyone supports the practice. Michael Rushford, president of the Criminal Justice Legal Foundation, which advocates for fewer rights for criminals, said risk assessments make judges more likely to release someone. He said their use is part of a larger trend in California of disinvesting in public safety.

"Risk assessments are guesses. You are guessing someone won't do something, and when you make a mistake, people get hurt. You will have people in morgues that are the result of those guesses," he said, adding that the governor's plan that moves some state prisoners to local jails forces counties to adopt such policies.

Judging who is a risk

However, Murray of the Pretrial Justice Institute said counties across the country are embracing risk-assessment tools as they become more advanced and accurate. He noted that under a traditional system, the bail amount for someone accused of car theft would be the same "whether you are Mother Teresa or Al Capone."

"It's a knuckleheaded way of doing business. It isn't safe, it isn't fair, and in the end it simply separates those that have money from those who don't," he said. "There's a tendency to look only at the release side of this, but just as important is the fact that it helps the court identify those who pose a serious risk. (Bail) money doesn't do that now."

In California, judges ultimately have the power to set a bail amount and may consider several factors, including criminal history, flight risk and the facts of the case. Judges, however, often stick to bail schedules, which vary from county to county. The bail amounts contained in those schedules are based solely on the crime with which a defendant is charged.

Arthur Wallenstein, the corrections chief in Montgomery County, Md., said risk assessments have been used there for a decade and saved taxpayers millions of dollars because they have not had to construct new jail beds.

In California, experts say the need for these pretrial services is particularly acute in jurisdictions such as Los Angeles County, which sent a higher rate of criminals to state prisons in the past than most Bay Area counties.

Jim Austin, a criminologist who is advising the Los Angeles County Sheriff's Department on jail management issues, said a pretrial program will be crucial to that county's ability to manage its jail population. Los Angeles, he noted, has about 15,700 inmates in its jails - and about 10,000 of them are awaiting trial.