

**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

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DATE: August 25, 2017

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso *Sharon Tso* Council File No: 17-0002-S103  
Chief Legislative Analyst Assignment No: 17-08-0845

SUBJECT: Resolution (Ryu – Wesson – Price) in Support of SB 10 (Hertzberg) and S. 1593 (Harris - Paul)

CLA RECOMMENDATION: Adopt Resolution (Ryu – Wesson – Price) to include in the City’s 2017 - 2018 State Legislative Program SUPPORT for SB 10 (Hertzberg), which would revise the pretrial release system to reduce the number of people held on money bail before a court appearance; and, to include in the City’s 2017 – 2018 Federal Legislative Program SUPPORT for S. 1593 (Harris – Paul), the Pretrial Integrity and Safety Act.

SUMMARY

On August 4, 2017, a Resolution (Ryu - Wesson - Price) was introduced to support SB 10 and S. 1593, both of which are related to the cash bail system. The Resolution states that under current law, an individual arrested and charged with a crime must be granted release on bail, except in certain circumstances when facts are evident or the presumption is great that the individual being held committed certain violent crimes.

The Resolution states that many defendants charged with a crime cannot afford bail, and are held at the county jail while awaiting trial. The Resolution further states that the current, wealth-based system does not promote justice and results in individuals who can safely be released from custody being held at government expense until their case is adjudicated. The Resolution, therefore, seeks an official position of the City of Los Angeles to support SB 10 (Hertzberg), which would revise California’s pretrial release system to reduce the number of people held on money bail while awaiting trial. The Resolution further seeks an official position of the City of Los Angeles to support S. 1593 (Harris – Paul), which would encourage states to reform or replace existing money bail systems.

BACKGROUND

In California, bail is a constitutional right, except when the defendant is charged with:

1. a capital crime;
2. a felony involving violence or sex and the court finds that the defendant’s release would result in great bodily harm to another; or
3. when the defendant has threatened another and the court finds it likely that the defendant may carry out that threat.

The State constitution also allows an arrestee to be released upon a written promise to appear (referred to as on “own recognizance”), and prohibits excessive bail.

Currently, State courts may require defendants to post monetary bail in order to be released from custody. Bail is designed to work as a financial guarantee to the court that the defendant will appear for all required court proceedings. Further, each county in California sets a bail schedule based on charged offenses. Bail schedules are used by arresting officers to allow an arrestee to post bail prior to their first court appearance. Once a defendant appears before a judge, current law requires an individualized determination of the appropriate bail amount.

There are significant problems with the current bail system. A monetary bail system like California's does not take into account community safety concerns, and release from custody is almost solely based on a defendant's ability to pay bail. Most individuals who can afford bail are allowed to go free, regardless of the crime they are charged with. Conversely, individuals who cannot afford to post bail are left in jail until their court appearance, even when the crime they are charged with is of a non-violent or non-serious nature.

A number of studies have shown that the money bail system has a significant negative impact on communities of color and the poor. Individuals who cannot afford to post bail are forced to remain in jail and are more likely to agree to a plea in order to get out of jail. In addition, keeping a person in custody solely because they do not have the ability to post bail can cause significant disruption to the defendant's life and the life of his or her family. A defendant can lose a job while incarcerated, causing even further economic hardship. Pretrial detention also contributes to overcrowding in jails, and results in individuals who have been convicted of a crime being released early to make space for those who have not yet been convicted, but cannot afford bail. According to the American Civil Liberties Union, 63 percent of people in jail in California are awaiting trial or sentencing. This represents a significant financial cost to counties in California, as it costs approximately \$114 a day to jail a person in the State, significantly more than pretrial supervision.

SB 10 (Hertzberg) would address the issues created by the current bail system in a number of ways. This bill would revise the pretrial release system to limit detention to specified persons, eliminate the use of bail schedules and establish pretrial service agencies at the county level, which would be tasked with conducting risk assessments on arrested persons and preparing reports with recommendations for conditions of release. This legislation would set specific procedures for pretrial release at arraignment and require courts to set monetary bail at the least restrictive amount to ensure a defendant's appearance. Courts would also be required to consider the defendants ability to pay bail. Courts would be prohibited from setting bail in an amount which results in pretrial detention solely because the defendant is unable to pay. SB 10 would result in far fewer individuals held in county jail while awaiting arraignment or trial while ensuring that defendants make all court appearances.

S. 1593 (Harris – Paul) would also reduce the use of money bail in the criminal justice system. This federal legislation would provide grants to States and Indian tribes to assist in the reformation of their criminal justice systems in an effort to encourage the replacement of money bail systems with other pretrial release programs. Other states, such as Kentucky, have implemented pretrial reform with significant success, and these types of reforms could also work in other jurisdictions.

DEPARTMENTS NOTIFIED

City Attorney's Office  
Police Department

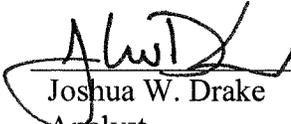
BILL STATUS

*SB 10*

12/15/2016	Bill introduced
01/16/2017	Referred to the Senate Committee on Public Safety
04/04/2017	From committee: do pass (5-1) and re-referred to the Senate Committee on Appropriations
05/25/2017	From committee: Do pass (5-2)
05/26/2017	Read second time. Ordered to third reading
05/31/2017	Read third time. Passed in Senate (26-11). Ordered to Assembly.
06/01/2017	In Assembly. Read first time. Held at desk.
06/26/2017	Referred to the Assembly Committee on Public Safety
07/12/2017	From Committee. Do pass (4-2) and re-refer to the Assembly Committee on Appropriations.
08/21/2017	From committee with author's amendments. Read second time and amended. Re-referred to the Assembly committee on Appropriations.

*S. 1593*

07/20/2017	Introduced in Senate
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Joshua W. Drake  
Analyst

SMT:jwd

Attachments: Resolution (Ryu – Wesson – Price)

RESOLUTION

RULES, ELECTIONS, INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, under current law, an individual arrested and charged with a crime must be granted release on bail, except in certain circumstances when facts are evident or the presumption great that the individual being held committed certain violent crimes; and

WHEREAS, many defendants who have been charged with a crime cannot afford bail, and are held at the county jail while awaiting trial; and

WHEREAS, detaining low and moderate risk defendants, even for just a few days, is correlated with higher rates of new criminal activity by those who have been held, and can have other negative effects; and

WHEREAS, the current, wealth-based system does not promote justice, and results in individuals who can safely be released from custody being held at government expense, until their case is adjudicated; and

WHEREAS, SB 10 (Hertzberg) would reform the current money bail system, enabling defendants without the ability to pay bail to be released from detention before their trial while ensuring that dangerous individuals remain in jail; and

WHEREAS, S. 1593 (Harris - Paul), would encourage states that have money bail systems like California's to institute changes to their systems, through the use of grants and other federal tools;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017 - 2018 State Legislative Program SUPPORT for SB 10 (Hertzberg), which would revise the pretrial release system to reduce the number of people held on money bail before a court appearance.

BE IT FURTHER RESOLVED THAT, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017 - 2018 Federal Legislative Program SUPPORT for S. 1593 (Harris - Paul), the Pretrial Integrity and Safety Act which would encourage states to reform or replace money bail systems.

PRESENTED BY David E. Ryu  
DAVID E. RYU  
Councilmember, 4<sup>th</sup> District

Herb J. Wesson, Jr.  
HERB J. WESSON, JR.  
Councilmember, 10<sup>th</sup> District

ORIGINAL

AUG 04 2017

[Signature]

SECONDED BY [Signature]