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PUBLIC POLICY  
INSTITUTE OF CALIFORNIA

**May 2017**

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*Supported with funding  
from the National  
Institute of Justice*

# Pretrial Release in California



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Technical appendices to this report are available on the PPIC website.

To further reduce reliance on incarceration without compromising public safety, state policymakers are currently considering reforming California's pretrial system. Key questions for reform include whether the state holds too many defendants in jail pending trial and whether bail is an equitable form of pretrial release.

This report uses newly available data to provide information about pretrial release in California and to give policymakers a better understanding of the defendants who tend to be released and the form of release they secure.

Examining jail bookings and releases from 11 counties from 2011 to 2015, this study finds:

- **Overall, 41.5 percent of individuals booked on misdemeanors or felonies are released pretrial.** The most common types of pretrial release include cite and release after booking (46.6%), bail (27.8%), and release on recognizance (15.9%).
- **Pretrial release is more common for less serious offenses.** About half of individuals booked on misdemeanors were released pretrial, compared with 29.8 percent of those booked on felonies.
- **For more serious offenses, bail is the predominant form of pretrial release.** Although pretrial release rates are low overall for more serious offenses, those who secure release tend to do so through bail. This is true for individuals charged with felonies or serious, violent, or sexual offenses. In contrast, the most common form of pretrial release for misdemeanors is cite and release.
- **Pretrial release is less common for those with active warrants, holds, or supervision violations at booking.** Among those with active warrants, about one-third (33.7%) are released pretrial. Pretrial release for those with holds (17.3%) or supervision violations (15.8%) is even less common.
- **Pretrial release rates across demographic groups merit further study.** Thirty-eight percent of Latinos and 33.7 percent of African Americans are released pretrial, compared with 48.9 percent of whites and 54.6 percent of Asian Americans. But gaps in pretrial release rates for Latinos and African Americans narrow to less than 2 percentage points, compared with whites, after we account for differences in offense characteristics, booking status, and the month and county of booking.

Pretrial risk assessment has been cited as a potential tool to help law enforcement and the courts identify defendants who pose a low risk to public

safety, are likely to appear for their court date, and can therefore await trial in the community. Future PPIC research will further examine the relationship between pretrial release and public safety risk for different groups of offenders. As policymakers consider changes to California's pretrial practices, a more comprehensive portrait of how the state's current system functions can help clarify whether reforms are likely to improve public safety and ensure court appearances.

# Introduction

In California, there are roughly 76,000 jail bookings each month.<sup>1</sup> After booking, defendants who are awaiting trial may be held in jail (known as pretrial detention) or released by law enforcement or the courts (pretrial release). Recent concerns about the state's heavy reliance on pretrial detention and the equity of the bail system have led state legislators to introduce two bills during the 2017–18 legislative session to reform California's pretrial practices.<sup>2</sup>

Pretrial detention, which aims to ensure court appearances and maintain public safety, is common in California. Most of the state's jail population—64 percent, or 46,000 inmates—are unsentenced defendants awaiting arraignment, trial, or sentencing.<sup>3</sup> These individuals account for nearly a quarter of the total population incarcerated in the state's jails and prisons.<sup>4</sup> Yet previous PPIC research finds that, despite heavy reliance on pretrial detention, California does not see higher rates of court appearances or lower levels of felony rearrests. An analysis of 2000–2009 data from the US Department of Justice reveals that the state's large urban counties relied more heavily on pretrial detention of felony defendants (59% detained), compared with other large urban counties in the United States (32% detained), even after accounting for differences in the composition of defendants. But the state still had higher rates of failure to appear in court and higher levels of felony rearrests during the pretrial period (Tafoya 2015).

Release on bail—one of the most common forms of pretrial release—is the part of the pretrial system most often targeted for reform (Judicial Council of California 2016a, 2016b).<sup>5</sup> Defendants who post bail offer a financial guarantee to courts that they will appear for mandated hearings. But ongoing litigation in two California counties alleges that the use of bail schedules is discriminatory based on wealth status and that bail practices in the state unjustly result in the overdeterrence of poor defendants who pose a low risk for pretrial misconduct.<sup>6</sup>

Advocates of the current system argue that the use of bail is a constitutional and effective means of ensuring court appearances, with the added benefit of operating at no cost to the taxpayer. In contrast, proponents of bail reform maintain that release decisions should be based solely on arrestees' risk of failing to appear in court and their risk of reoffending if released while awaiting trial. In particular, concern over the detention of low-risk defendants has increased, as a growing body of research suggests otherwise similar arrestees have a higher likelihood of conviction, are given harsher sentences, and have higher rates of post-disposition recidivism if they are detained rather than released pretrial (Stevenson 2016; Gupta, Hansman, and Frenchman 2016; Sacks and Ackerman 2014; Lowenkamp, VanNostrand, and Holsinger 2013). Conversely, release on bail can imperil public safety by

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<sup>1</sup> Bookings per month based on monthly average from January 2015 to December 2015, according to the Board of State and Community Corrections [Jail Profile Survey](#).

<sup>2</sup> These bills are Senate Bill 10 and Assembly Bill 42 (Office of Senator Robert Hertzberg 2016; Office of Assemblymember Robert Bonta 2016). See the California Legislative Information website for the current status of the [senate bill](#) and the [assembly bill](#).

<sup>3</sup> Total jail population based on total jail ADP (average daily population) and unsentenced jail ADP in the Board of State and Community Corrections [Jail Profile Survey](#) as of December 2015. This estimate provides a snapshot of the number of unsentenced individuals in the jail system at any given time. However, the number of unsentenced individuals that flow through the jail system over the course of one year is much higher than the number captured in this snapshot. The number of unsentenced inmates represents an upper bound estimate of the pretrial population. The unsentenced population is not synonymous with the pretrial population that is potentially eligible for release. Counties are instructed to count a defendant as unsentenced even if the defendant has been sentenced for one crime but has another case pending. An inmate may also be counted as unsentenced if he or she has been convicted of a crime but is awaiting sentencing. No systematic review of counties has been conducted to determine how parole and probation violators are counted and under what circumstances they are classified as sentenced versus unsentenced.

<sup>4</sup> Total prison population based on the California Department of Corrections and Rehabilitation [Monthly Report](#) from December 31, 2015.

<sup>5</sup> Also, in 2015 the US Department of Justice filed a statement of interest arguing that bail practices that incarcerate indigent individuals before trial solely because of their inability to pay for their release violates the Fourteenth Amendment. See U.S. SOI, *Varden v. City of Clanton*, No. 2:15-cv-34, 2015 WL 5387219 (M.D. Ala. Sept. 14, 2015).

<sup>6</sup> See *Buffin v. City and County of San Francisco*, Case No. 15-cv-04959-YGR, United States District Court, N.D. See also *Welchen v. County of Sacramento and Kamala Harris in her Official Capacity as California Attorney General*, Case No. 16cv00185-TLN-KJN United States District Court, E.D.

allowing those who pose a high risk of pretrial misconduct a way to secure release if they have the financial means to post bail.

The current push for changes to pretrial processing comes on the heels of two major reforms that have lessened California's reliance on incarceration and reprioritized correctional resources. In 2011, the state implemented public safety realignment, which transferred responsibility for non-serious, non-violent, and non-sexual felonies from state prison and parole to county jail and probation.<sup>7</sup> The prison population declined and state prisons became custodial facilities that were used more exclusively for those convicted of serious, violent, or sexual crimes.<sup>8</sup> Realignment initially led to overcrowding in jails, which was alleviated somewhat by the enactment of Proposition (Prop) 47 in 2014. Prop 47 limited the circumstances under which common offenses, such as drug possession and theft, could be charged as felonies.<sup>9</sup> Jail bookings declined—mostly due to reduced bookings of individuals for Prop 47 offenses—and pretrial releases increased among those held for these offenses (Bird et al. 2016). Prop 47 essentially marked a shift away from the use of jail resources for lower-level drug and property offenders (Grattet et al. 2016).

In this changing policy environment, identifying effective pretrial reforms requires an understanding of the size and composition of the pretrial population, beginning with who comes through the front doors of the jail system. This research draws on newly available data collected through an ongoing collaboration between PPIC, the California Board of State and Community Corrections (BSCC), and a group of counties representative of the state.<sup>10</sup> The PPIC–BSCC Multi-County Study (MCS) captures individual jail entries and exits, thus providing foundational information on how pretrial release is operating in California and informing the debate over pretrial processing and bail reform. Overall, the MCS aims to help policymakers identify cost-effective corrections and supervision policies that would reduce recidivism.

This report begins by describing the pretrial process and presents rates of pretrial release by type. We then analyze whether pretrial release rates changed after Prop 47. Next, we examine the relationship between pretrial release and offense characteristics, booking status, and demographics. We also look at the relationship between offense characteristics and forms of pretrial release. This research does not offer a casual analysis of factors that lead to pretrial release but rather describes patterns in how pretrial release is used. We expand on earlier research by including both felony and misdemeanor bookings as well as both large urban counties and more sparsely populated counties.<sup>11</sup>

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<sup>7</sup> After realignment, the composition of jails shifted modestly as pretrial detainees and those serving misdemeanor sentences were displaced by convicted felons and parolees serving time for supervision violations (Lofstrom and Raphael 2013).

<sup>8</sup> California's Public Safety Realignment Act was implemented on October 1, 2011 in response to a federal court decision (upheld by the Supreme Court) that the state was in violation of cruel and unusual punishment protections due to the failure of the prison system to provide adequate health care. The court ordered California to reduce its prison population to 137.5 percent of rated capacity.

<sup>9</sup> On November 4, 2014, California voters enacted the Safe Neighborhoods and Schools Act. This law (Prop 47) reduced most drug possession offenses and thefts of property valued under \$950 to misdemeanors and allowed eligible offenders who had served or were serving a felony sentence for a Prop 47 offense to apply to the court for a reclassification of the sentence or of the crime from a felony to a misdemeanor. Those previously convicted of murder, rape or other sexual offenses, or certain gun crimes are not eligible for Prop 47 penalty reductions. Judges also have the discretion to deny petitions for resentencing if they determine that the petitioner poses a threat to public safety.

<sup>10</sup> The following 12 counties are participating in the BSCC–PPIC MCS: Alameda, Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. Data from Alameda County are not yet complete, and therefore, Alameda is not included in this analysis. The 11 counties included in this analysis account for more than half of California's jail population.

<sup>11</sup> Prior analysis (Tafoya 2015) was conducted using data from the State Court Processing Statistics (SCPS). That analysis was based on data from 2000–2009 and was restricted to felony charges that were filed in large urban counties.

# Pretrial Processing and Release Opportunities

Following a jail booking, there are multiple points at which pretrial release may be secured, and these points differ depending on whether the charged offense is a felony or misdemeanor. Figure 1 shows these opportunities for pretrial release, beginning with an initial contact between law enforcement and the suspect (i.e., an arrest).

With some exceptions, law enforcement has the authority to “cite and release” those arrested on misdemeanor charges in the field instead of booking them into jail. Booking officers are also authorized to cite and release most individuals arrested on misdemeanor charges upon completion of booking.<sup>12</sup> For jail facilities operating under a court-imposed population cap, the sheriff is authorized to make capacity releases when the jail exceeds its mandated population threshold. Those who are not cited and released or released due to capacity constraints may still be eligible for release before their first court appearance through the payment of bail.<sup>13</sup> Arrestees unable to secure release through any of the above means will remain in pretrial detention until arraignment.<sup>14</sup> At arraignment (the defendant’s first court appearance) and for the duration of pretrial detention, the court may set or adjust the bail amount or release bail-eligible defendants on their own recognizance. When released on recognizance, the defendant signs a promise to appear for the next court date and agrees to the conditions of release set by the court.<sup>15</sup>

**FIGURE 1**  
Pretrial release may be secured at multiple points following a jail booking

Arrest	Jail booking	First court appearance	Pretrial detention
<p><b>Release by law enforcement</b></p> <ul style="list-style-type: none"> <li>• Field cite and release</li> </ul>	<p><b>Release by sheriff</b></p> <ul style="list-style-type: none"> <li>• If entitled to bail, release on bail per scheduled bail amount</li> <li>• Cite and release</li> <li>• Unsentenced capacity release</li> </ul>	<p><b>Release by court</b></p> <ul style="list-style-type: none"> <li>• Recognizance release (may include pretrial supervision)</li> <li>• Judicial discretion to set, raise, or lower the bail amount</li> </ul>	<p><b>Until conviction, exoneration, or dismissal of case</b></p> <ul style="list-style-type: none"> <li>• Entitled defendant retains right to bail</li> <li>• Unsentenced capacity release</li> <li>• Judicial discretion to grant recognizance release or to set, raise, or lower the bail amount</li> </ul>

SOURCE: PC §§ 853.6, 1269, 1270, and 1318–1319.5.

NOTE: Court orders authorize the sheriff to release pretrial detainees on “capacity releases.”

<sup>12</sup> In this report we refer to release by a law enforcement officer in the field as a “field cite and release.” If the arrestee is released after booking in a county jail, we refer to it here as a “cite and release.” This analysis does not include data on field cite and releases. Penal Code §§853.6, 1270 govern the release of those arrested for misdemeanors. Under most circumstances, law enforcement has the authority to release a misdemeanor arrestee in the field with a citation. However, citations cannot be issued for offenses involving domestic violence or abuse (unless the officer determines there is not a reasonable likelihood that the offense will continue). Nothing in the law prevents an officer from booking the arrestee. The booking officer, under most circumstances, also has the discretion to cite and release a misdemeanor arrestee after booking, unless the offense requires a bail hearing.

<sup>13</sup> For a defendant’s right to bail and exceptions, see Penal Code §1271 and California Constitution Article 1 §§12, 28(f)(3). For discharge from custody on bail, see Penal Code §§1268, 1269, 1269b. For local court responsibility for bail schedule and basis for bail amounts based on seriousness of charge, see Penal Code §1269b(e).

<sup>14</sup> Penal Code §825 states that defendants in custody must be arraigned within 48 hours of arrest, excluding Sundays and holidays.

<sup>15</sup> Penal Code §§1318-1319.5, 1270 govern release on one’s own recognizance.

## Types of Pretrial Release

Table 1 shows the number and percentages of individuals securing different types of pretrial release among the counties participating in the MCS. From October 2011 to October 2015, 41.5 percent of individuals booked into jail secured pretrial release, accounting for about 648,000 releases.<sup>16</sup> Among those who secured pretrial release, cite and release (46.6%) and bail (27.8%) were the most common forms of release.<sup>17</sup> Supervised pretrial release (3.2%) was the least frequent form of release. With supervised pretrial release, the court grants the defendant release but also sets specific terms of release. Common conditions for release on pretrial supervision include weekly check-ins, drug testing, electronic monitoring, or home detention.

**TABLE 1**

Cite and release is the most common form of pretrial release, followed by bail

Release type	Number	Percent	Median length of stay (days)
Cite and release	301,991	46.6%	1
Bail	179,901	27.8%	2
Own recognizance	103,152	15.9%	3
Unsentenced capacity release	42,404	6.5%	2
Supervised pretrial release	20,843	3.2%	2
All releases	648,291	100.0%	2

SOURCE: Author calculations based on the BSCC–PPIC Multi-County Study data (2011–2015).

NOTES: This table includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. Length of stay is equal to one for same-day releases, two for a next-day release, etc.

For those who secure any form of pretrial release, the median length of stay is one to three days. Individuals who are cited and released are generally released within hours, as booking officers are authorized to make these releases once the booking process is complete. Bail releases tend to take more time because, following booking, the arrestee must secure the funds to post bail. Generally, those who make bail are released the day after booking. Recognizance releases are nonfinancial, like cite and release, but the courts are responsible for recognizance releases. In some counties, court officers are on call around the clock to grant these releases. When a court officer is not on call, the courts generally grant release on recognizance at arraignment. This generally occurs within 48 hours of booking.

<sup>16</sup> Total jail bookings in MCS counties for this period were 1,980,653. In the analysis, we refine the universe of all bookings to exclude the following categories: individuals under age 18 (<0.1%); individuals booked on offenses unlikely to be eligible for pretrial release, including commitments to serve sentences, transfers, holds only, detention only, and supervision violation only (15.9%); and individuals with missing data on booking type or charge (0.9%). We also exclude individuals booked on infractions (4.2%). Taken together, these exclusions sum to 21 percent of all bookings.

<sup>17</sup> Most county jail information systems are not set up to retain information about the bail amounts, bail payments, and those who are detained because of an inability to pay bail. In many systems, the bail amount is maintained in the system as a live field indicating the amount due. As a result, the bail amount is reset to zero when the inmate is physically released.



# Pretrial Release Before and After Proposition 47

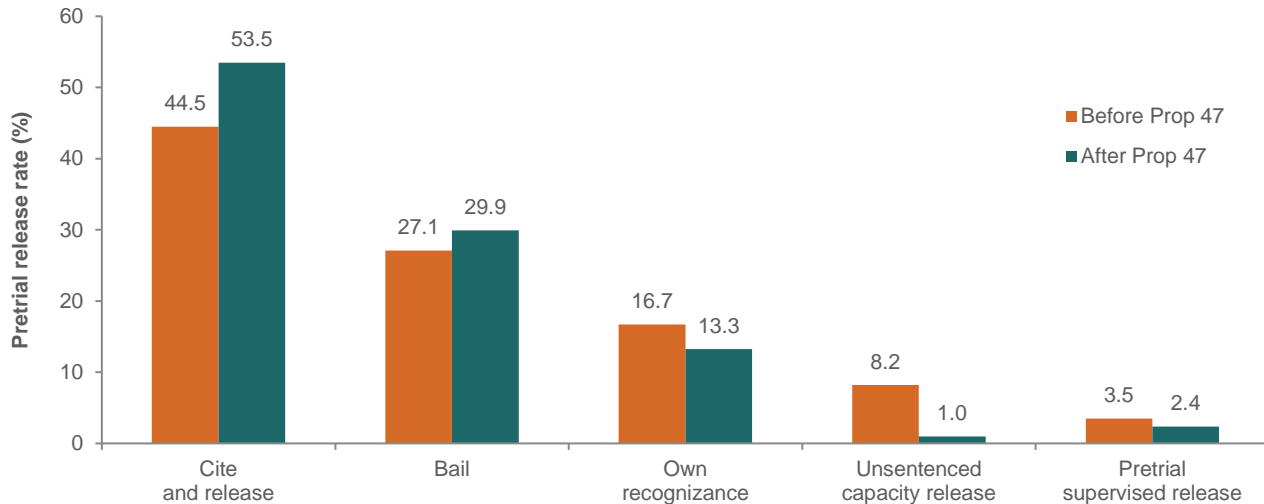
Prop 47 reduced the penalties associated with specific, lower-level drug and property offenses by requiring prosecutors to charge eligible defendants with misdemeanors rather than felonies.<sup>18</sup> Prop 47 was expected to reduce the number of individuals detained pretrial both because law enforcement could cite and release in the field, instead of booking misdemeanants into jail, and because those booked into jail on misdemeanors would be more likely to secure release than those booked on felonies.

We find that pretrial release rates did not change under Prop 47. However, it is important to keep in mind that the release rate represents the share of those booked into jail that then secured pretrial release. As anticipated, under Prop 47, the total number of individuals booked into jail declined as fewer individuals were booked for Prop 47 offenses (Bird et al. 2016). The policy change effectively reduced the overall level of pretrial detention by reducing the number of individuals who were booked into jail and, therefore, at risk for pretrial detention.

Although pretrial release rates remained steady at 41.5 percent of bookings, we see some changes in the breakdown of different forms of pretrial release before and after Prop 47. Figure 2 shows the shifts in pretrial release types. Under Prop 47, the use of cite and release increased from 44.5 percent to 53.5 percent of all pretrial releases. Release on bail also increased from 27.1 percent to 29.9 percent of all pretrial releases. In contrast, the use of unsentenced capacity releases dropped markedly after Prop 47, reflecting a reduction in jail population pressure (Grattet et al. 2016).

**FIGURE 2**

Under Prop 47, the share of capacity releases declined, while the share of cite and release increased



SOURCE: Author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015).

NOTE: This chart includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. The pretrial release rates are calculated as a share of all pretrial releases.

<sup>18</sup> Those with prior convictions for offenses classified as serious, violent, or sexual are ineligible for penalty reductions under Prop 47.

## Factors Related to Pretrial Release

Based on California’s legal framework, the likelihood of securing pretrial release should be associated with factors such as the characteristics of the offense (e.g., charge severity) and defendants’ status at booking. However, the likelihood of securing pretrial release might also be associated with defendants’ demographic characteristics. Below we provide descriptive findings of the relationship between pretrial release and offense characteristics, booking status, and demographics. It is important to note that the likelihood of pretrial release should also be related to defendants’ criminal history. The courts must consider defendants’ criminal history when making release decisions, but we do not have access to criminal history data at this stage of research.

### Offense Characteristics

Offense characteristics can be described in various ways.<sup>19</sup> Charge level—misdemeanor or felony—is one important gauge of severity, and within each charge level, offenses can have lower or higher degrees of severity, based upon the California Department of Justice’s offense hierarchy. Additionally, certain classes of offenses—for example, serious, violent, or sexual offenses—may be of particular concern for public safety and reduce defendants’ likelihood of securing pretrial release.<sup>20</sup>

As described in more detail below, we see a strong association between offense characteristics and the likelihood of pretrial release. Individuals booked on more serious offenses—whether measured by charge severity or specific classes of offenses that may pose a risk to public safety—are generally less likely to secure pretrial release. See [Technical Appendix B](#) for the results of our regression analysis, which largely confirms these findings.<sup>21</sup>

### Charge Severity

Table 2 provides an overview of some common offenses that fall into different categories of charge severity. Lower-level felonies and lower-level misdemeanors are the most common kinds of bookings (see [Figure A1 in the technical appendices](#)).

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<sup>19</sup> It is important to distinguish between the analysis of offense characteristics (including “severity”) in this report, which applies to booking offenses, and “risk” of pretrial misconduct, which applies to the individual who is booked. Although offense characteristics provide some indication of an individual’s risk of pretrial misconduct, factors such as age at current arrest, pending charges at the time of the offense, prior criminal history, and prior failures to appear are also needed to determine the risk of pretrial misconduct. Thus, without criminal history information, the extent to which these detainees are made up of low-risk arrestees and defendants is unclear (Laura and John Arnold Foundation 2016).

<sup>20</sup> A serious felony is one described in Penal Code §1192.7(c). A violent felony is one described in Penal Code §667.5(c). A sexual offense is one described in Penal Code §290.

<sup>21</sup> In our multivariate regression model, which controls for the factors analyzed in this report (offense characteristics, booking status, demographic characteristics, month of booking, and county of booking), we find that individuals booked on misdemeanor offenses are more likely to be released than those booked on felony offenses and, for those charged with either misdemeanors or felonies, the likelihood of release is generally higher for lower-level offenses. We also find that individuals booked on offenses that are serious, violent, or carry enhancements are less likely to be released pretrial. However, in contrast to the descriptive findings, our regression analysis finds that those booked on sex offenses are 5.1 percentage points more likely to be release pretrial. Note, we are not able to control for criminal history factors at this time.

**TABLE 2**

## Common offenses by charge severity

Charge severity	Common offenses
Misdemeanor (low)	Drunk and disorderly conduct, driving on a suspended license, shoplifting, driving under the influence (DUI), violation of a domestic violence protective order
Misdemeanor (high)	2nd degree burglary, domestic battery, assault and battery, controlled substance (CS) possession, narcotic CS possession, resisting arrest
Felony (low)	Drug sales, grand theft, motor vehicle theft, receive stolen property, CS possession, narcotic CS possession, burglary, child abuse, robbery
Felony (high)	Murder, rape, kidnapping, arson, transport and manufacture drugs, sex crimes, assault with a deadly weapon causing great bodily injury

SOURCES: Common offenses were determined by author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015). Offense severity categories are based on the California Department of Justice offense hierarchy.

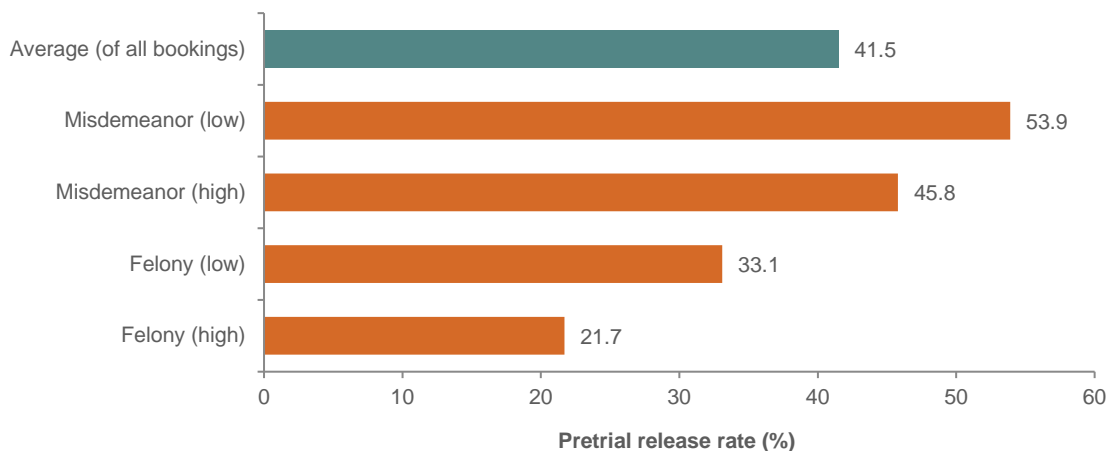
NOTE: Categories are based on the charge level of the most serious offense (misdemeanor, felony) and the rank of that offense in the California Department of Justice seriousness hierarchy. Certain offenses (e.g., CS possession) may be charged as a misdemeanor or a felony.

Figure 3 presents pretrial release rates by charge severity from October 2011 to October 2015. Generally speaking, pretrial release rates decrease as charge severity increases.<sup>22</sup>

Overall, about one-half of individuals booked on misdemeanors are released pretrial. Those booked on lower-level misdemeanors have a pretrial release rate of 53.9 percent and those booked on higher-level misdemeanors have a release rate of 45.8 percent. In contrast, the overall felony pretrial release rate is notably lower, at 29.8 percent. About one-third (33.1%) of lower-level and less than one-quarter (21.7%) of higher-level felony bookings secure pretrial release.

**FIGURE 3**

Individuals booked on misdemeanors are more likely to be released pretrial



SOURCES: Author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015). Offense severity categories are based on the California Department of Justice offense hierarchy.

NOTES: This chart includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. The categories of charge severity are based on the charge level of the most serious offense (misdemeanor, felony) and the rank of that offense in the California Department of Justice seriousness hierarchy. For total bookings and pretrial releases, see [Figure A1 in the technical appendices](#).

<sup>22</sup> These findings are consistent with California statutes that favor the pretrial release of those arrested on misdemeanor offenses (Penal Code §§853.6, 1270), as well as statutes requiring judges to base felony bail schedules on crime severity (Penal Code §1269b(e)).

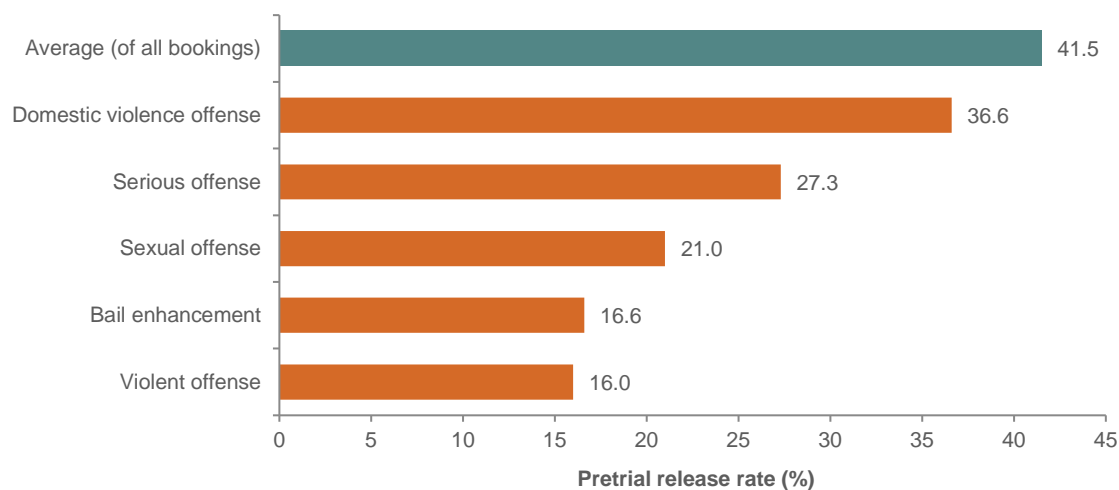
## Specific Classes of Offenses

In addition, we see that individuals booked on specific classes of offenses that may pose a risk for public safety are less likely to be released pretrial. These findings may reflect state statutes that place restrictions on the pretrial release of those charged with these types of offenses.<sup>23</sup>

Figure 4 shows that release rates are lower than average (41.5%) for those booked on domestic violence offenses (36.6%), serious offenses (27.3%), offenses requiring sex offender registration (21.0%), or violent offenses (16.0%).<sup>24</sup> The pretrial release rate for charges carrying bail enhancements, which increase the bail amount under certain circumstances, is also lower than average, at 16.6 percent.<sup>25</sup> Enhancements are common in cases that involve grave bodily injury, habitual offenders, or gang-related offenses.

**FIGURE 4**

Individuals booked on certain offense classes are less likely than average to secure pretrial release



SOURCE: Author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015).

NOTE: This chart includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. For total bookings and pretrial releases, see [Figure A2 in the technical appendices](#).

<sup>23</sup> For example, see Penal Code §1270.1 pertaining to charges classified as violent, serious, or domestic violence.

<sup>24</sup> These charge classes are not mutually exclusive but include all bookings in which there is any offense that qualifies. For example, the domestic violence category includes all bookings for which there is at least one booking offense related to domestic violence.

<sup>25</sup> For example, if a defendant is charged with the use of a weapon in the commission of a robbery, the total bail amount would be the base bail amount for the robbery charge plus a weapons enhancement.

## Offense Characteristics and Forms of Pretrial Release

Compared to other forms of pretrial release, cite and release is most commonly used for individuals booked on less serious charges, while bail is more common for more serious offenses. In addition to securing pretrial release at higher rates than those charged with felonies, individuals charged with misdemeanors are more likely to secure nonfinancial forms of release. Cite and release is the most common form of pretrial release for misdemeanor bookings: among those released pretrial, 79.6 percent of lower-level misdemeanor bookings and 63.6 percent of higher-level misdemeanor bookings are cited and released. In contrast, the dominant form of release for felony bookings is bail. Among those booked on felonies who secured release, 52.4 percent of lower-level and 62.6 percent of higher-level felony bookings were released on bail. It is important to note that less than one-third of individuals booked on felony charges are released pretrial, as shown in Figure 3.

When looking at specific classes of offenses that tend to raise public safety concerns, we again find that, among those who secure pretrial release, the dominant form of release is bail. Among those who were released pretrial, release on bail was secured by 86.0 percent of those booked on sexual offenses, 76.3 percent of those booked on serious offenses, 68.3 percent of those booked on domestic violence offenses, and 68.1 percent of those booked on violent offenses. Among those booked on charges that carry bail enhancements who secured pretrial release, 71.7 percent were released on bail. Although pretrial release rates are low overall for individuals booked on these offenses, as shown in Figure 4, the vast majority of those who secure pretrial release do so through bail.

## Booking Status

We also find that other booking factors are associated with a lower likelihood of pretrial release. A number of statutes reduce the likelihood of pretrial release for defendants with active warrants (arrest or bench warrants), supervision violations, or holds.<sup>26</sup> For example, individuals on probation who are arrested on new charges may be subject to bail enhancements. In addition, some defendants are subject to holds rendering them ineligible for release on bail, including those arrested on extradition warrants and those put on hold by a parole officer.<sup>27</sup>

Nearly 40 percent of bookings included in this analysis had an associated warrant. Supervision violations, charges of failure to appear (FTA) in court, and holds were less common (see [Figure A3 in the technical appendices](#)). When looking at total bookings from October 2011 to October 2015, we find that release rates are lower than average (41.5%) for individuals who were flagged at booking with prior failures to appear (38.3%), active warrants (33.7%), holds (17.3%), or supervision violations (15.8%) (Figure 5). See [Technical Appendix B](#) for the results of our regression analysis, which largely confirms these findings.<sup>28</sup>

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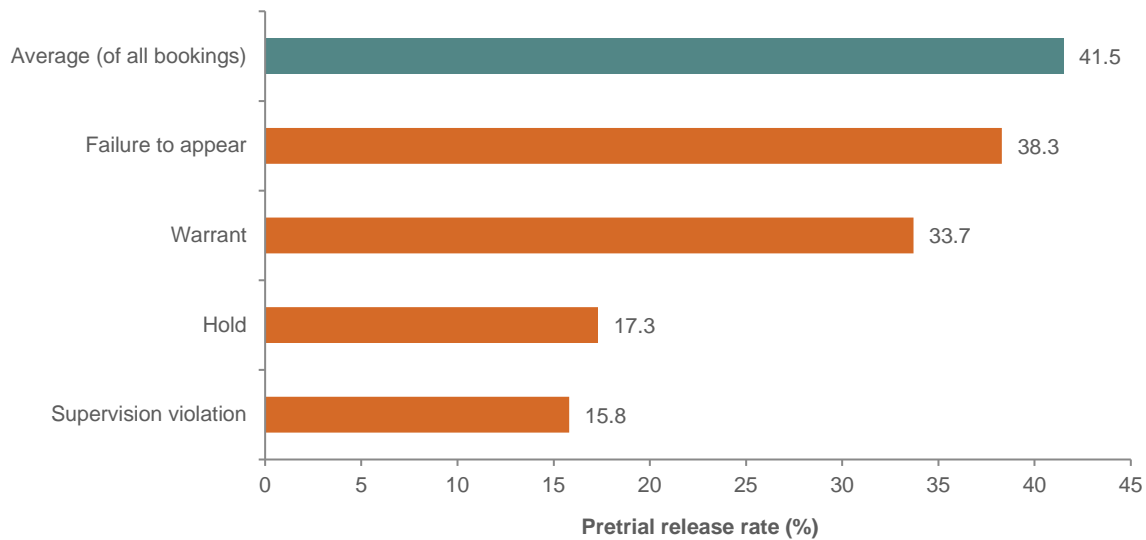
<sup>26</sup> Pursuant to Penal Code §12022.1, defendants charged with new felonies while released on bail or their own recognizance, as well as those under probation supervision, may be subject to bail enhancements. Pursuant to Penal Code §3056 and Code of Regulations §3750, supervising parole officers may place holds on defendants under specified circumstances. A hold may be imposed or a warrant issued for an inmate with outstanding legal matters either within the jurisdiction where they are charged or in another jurisdiction. Examples include: probation holds from another county or state, warrants issued due to failures to appear in court, arrest warrants, and holds due to new federal law violations.

<sup>27</sup> In our data there was no indicator for jail holds for Los Angeles County. Also, not all MCS counties collect sufficient data to identify the share of warrants that are warrants for FTA versus arrest warrants; here, only arrestees with a booking charge on a code section indicating an FTA are flagged as FTA bookings.

<sup>28</sup> Our regression model confirms that individuals with holds, warrants, or supervision violations are less likely to secure pretrial release. However, we find that those flagged as having FTAs are actually more likely to receive pretrial release than their otherwise similar counterparts. It is important to note that FTAs are not always

**FIGURE 5**

Pretrial release rates are lower for individuals with certain booking factors



SOURCE: Author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015).

NOTE: This chart includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. For total bookings and pretrial releases, see [Figure A3 in the technical appendices](#).

## Demographics

Despite concerns about potential racial and socioeconomic disparities in pretrial release, data capturing the demographic and economic characteristics of California’s pretrial detainees are limited. In this study, we are able to examine the race/ethnicity and gender of those who secure some form of pretrial release.

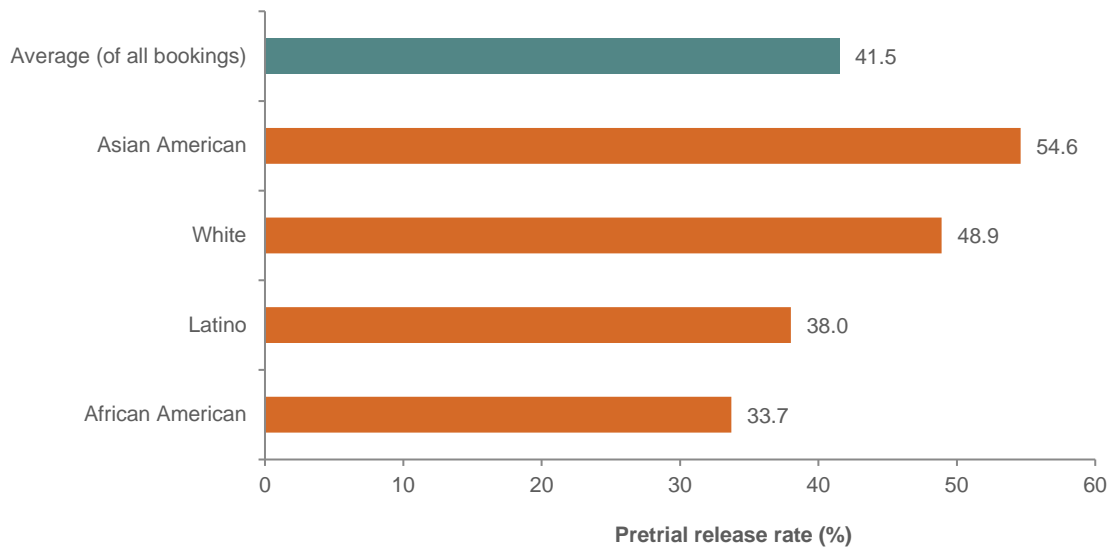
Figure 6 presents pretrial release rates by racial/ethnic group from October 2011 to October 2015. Asian Americans and whites have higher rates of pretrial release (54.6% and 48.9%, respectively), compared to the average of 41.5 percent. In comparison, Latinos and African Americans have rates of pretrial release that are lower than average (38.0% and 33.7%, respectively). We also find that females are somewhat more likely (48.8%) and males are somewhat less likely (39.5%) to secure pretrial release.

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flagged at booking and may also be captured as warrants, which leads us to caution against drawing strong conclusions from this finding. It is also important to note that we are not able to include criminal history factors in this analysis at this time.

**FIGURE 6**

Differences in pretrial release rates across racial/ethnic groups merit further study



SOURCE: Author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015).

NOTE: This chart includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. For total bookings and pretrial releases, see [Figure A4 in the technical appendices](#).

Our preliminary analysis suggests that much of the difference in pretrial release across racial/ethnic groups appears to be driven by variation across counties. When accounting for differences in offense characteristics, booking status, and month of booking, we continue to see gaps in pretrial release rates across racial/ethnic groups.<sup>29</sup> When we also control for county, however, these racial/ethnic gaps in the likelihood of pretrial release narrow to a 1.5 percentage point difference between Latinos and whites and a 1.7 percentage point difference between African Americans and whites (see [Technical Appendix B](#)).<sup>30</sup> As noted above, data regarding criminal history, an important indicator of public safety risk that is known to vary across racial/ethnic groups, are unavailable at this time. Future PPIC research incorporating criminal history data will further clarify the relationship among pretrial release, demographic characteristics, and county of booking.

## Conclusion

In California, rates of pretrial release have been low relative to the national average, yet rates of pretrial misconduct are generally higher. This suggests that California has room to improve its pretrial practices. As state legislators contemplate changes to the pretrial system, this report sheds light on how the current system operates.

We find that more serious offenses are strongly associated with a reduced likelihood of pretrial release. However, a fair number of individuals charged with less serious offenses are also detained pretrial: only one-half of individuals booked for misdemeanors and one-third of individuals booked on lower-level felonies secure some form of pretrial release. Bookings on these offenses make up the majority of jail bookings in California. With

<sup>29</sup> When controlling for offense characteristics, booking status, and booking month (but not county), we find that Latinos and African Americans are 12.0 percentage points and 13.8 percentage points, respectively, less likely to secure pretrial release, compared with whites. Regression results are presented in [Technical Appendix B](#).

<sup>30</sup> The gender difference in the likelihood of pretrial release narrows but persists, with females 4.0 percentage points more likely to be released pretrial than males.

appropriate use of pretrial risk assessment tools that account for criminal history, it may be possible to identify a subset of these offenders who pose a low risk to public safety and are appropriate candidates for pretrial release.

Pretrial risk assessment tools may also be useful in determining whether those individuals currently released through the bail system pose a high risk to public safety. Although a smaller portion of defendants booked on more serious charges secure pretrial release, those who do tend to be released through bail. This is true for individuals booked on higher-level felonies and those charged with serious, violent, or sexual offenses. Pretrial risk assessment could aid in determining when bail releases would pose an unacceptable risk to public safety.

In addition, we found low rates of pretrial release for individuals with active warrants and those booked with holds or supervision violations. Nearly 40 percent of bookings in our data had an associated warrant. Although we are unable to quantify how many of these warrants were issued for failures to appear in court, we do know that multiple jurisdictions across the country have successfully reduced failures to appear by instituting court date reminder systems (Nice 2006). This is a potentially cost-effective system for reducing pretrial detention levels and improving pretrial release outcomes.

Lastly, we find considerable variation in pretrial release rates across demographic groups and counties. Future PPIC research that incorporates criminal history data (currently unavailable) will help clarify the relationship between pretrial release, demographic characteristics, and county of booking. At this stage, we cannot say how much of this variation is attributable to differences in the public safety risk of counties' booking populations or to other county-level preferences or practices. This finding indicates, however, that counties may benefit from additional resources to invest in pretrial risk assessments and other tools that would allow them to explore whether their pretrial decision-making processes result in unnecessary pretrial detention or have disparate impacts on some demographic groups.



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## ACKNOWLEDGMENTS

This project was supported by Award No. 2013-R2-CX-0010, awarded by the National Institute of Justice, Office of Justice Programs, US Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect those of the Department of Justice. The authors gratefully acknowledge the ongoing participation of the Board of State and Community Corrections and the participating counties in the BSCC–PPIC MCS. The report benefited from the thoughtful feedback of Magnus Lofstrom, Francine Byrne, Steve Raphael, Joseph Hayes, and Vicki Hsieh.

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