

2021 – UPDATE

WHAT HAPPENS AFTER PROP 25?

Proposition 25 and SB 10, the legislation to end cash bail in California, has been **defeated**. Affordable Educators applauds the efforts of the bail industry, proving that a small group of dedicated professionals can be effective in overturning the power of legislators.

So, now what?

Well; for one thing, lawmakers are essentially barred from trying to repeal bail using a similar reform. They might also be hesitant to take it up again because voters have spoken. That means that as bail agents, you get back to business, and as educators, we continue providing you excellent, low-cost bail continuing education programs.

But, that **doesn't mean** that legislators will stop trying to bring about bail reform. Here are some scenarios that could play out:

1. Some of the parties that were involved in defeating Proposition 25, didn't think it was the answer, but **still want criminal justice reforms**. Lex Stepling, for example, was the co-chair of the No on Proposition 25 has sued the sheriff's office over jail conditions, rallied against new jail construction, and pushed for taking funding away from police departments. Stepling's ultimate goal is to change the way judges look at pretrial incarcerations and utilize jail diversion programs.
2. Other groups plan to push a county-by-county plan, called "**Preserving the Presumption of Innocence**" where non-law-enforcement groups evaluate people's risk to be released without bail and only detain people accused of serious or violent felonies. It is modeled, in part, from the bail reform law voters just shot down. However, many, including the author of Prop 25 (Robert Hertzberg), doubt that a county-by-county plan can be effective without a statewide mandate.
3. The California Supreme Court has a case pending that would force judges to consider a defendant's **ability to pay bail** before setting it. The Kenneth Humphrey Cas, if it succeeds, it could force a reckoning about how high bail is set.
4. Certain progressive jurisdictions, like San Francisco, continue to target **perceived racial disparities** in the justice system, specifically issues like gang enhancement charges and "pretextual" traffic stops. And in Los Angeles, progressives have won election on the promise to eliminate cash bail. Other, more conservative jurisdictions, are silent on the need for bail change, so the end result could be some jurisdictions will have aggressive bail reform policies while others ignore them completely.

A Respite

For the meantime, the bail industry can enjoy a well-earned sigh of relief. Its ranks still feel they **serve a valuable role** in allowing people who are poor or in the middle the ability to bail out of jail without the need to come up with thousands of dollars they cannot afford. They believe that efforts to eliminate bail, such as Prop 25, would have kept more people in jail, some having almost no way out. Some are also quick to point out that a majority of people who are arrested and jailed are convicted of their crimes and the current bail system proves to be an incentive for criminals to return to court so that justice is served.

Opponents, while defeated, still contend that while some people might have been detained slightly longer, the vast majority of suspects would have been released faster and the whole racial disparity issue mitigated with fairer pretrial release decisions by judges.

For the moment, we will not know if that is true.

BAIL INSURANCE 2021

The new year will be an opportunity to review your insurance coverage.

It is important to underscore that the **general liability insurance** that you buy to protect your bail agency will cover you for slip and falls in the office, property damage, theft and a few other things, but it falls short in many other areas:

Bail Skips & Owes:

Those wonderful customers that skip out and cause you to pony up thousands to the court can amount to much more significant numbers where multiple skips happen at the same time. It's conceivable, that you could be on the hook for millions. Bail skips and owes is a liability **NOT covered by your general liability** policy. You may need **bail insurance coverage**. Bail insurance acts as a bigger bond that serves as proof to a court that you, the bail agent, can back the bonds that you write for defendants.

Specific Premises Liability

When clients visit your office, you assume liability related to the **safety of the premises (office and parking lot), client privacy, slip and falls**, etc. Some of this may be covered by your general liability policy, but there may be exclusions such as:

- Off-site exposures when travelling to courtrooms, prisons or client homes
- Assault, battery, libel, slander and invasion of privacy
- Recovery activities like accidental injuries or exposure for innocent party civil protections.

For coverage on some of these exclusions, consider a professional liability or other individual policies such as business auto, work comp (discussed below).

Property Exposures

Your general liability policy again may have exclusions or simply ***not enough coverage*** when you consider:

- Client record storage
- Property held as collateral for bond customers

Review your limits with your insurance agent.

Workers Compensation

General liability policies ***rarely provide adequate coverage*** for office, jail or courtroom worker compensation issues such as:

- Employee injuries like eye strain, carpal tunnel, neck and other trauma
- Physical attacks or hold-ups involving employees (a consequence of bail agencies dealing in cash transaction).

A separate work comp policy is needed to cover these issues.

Weird Property Losses

The general liability policy may fall short on the following coverages:

- Accounts receivables
- Valuable papers and storage drives
- Power failure resulting in loss of digital records
- Unauthorized use of blank bonds

You may consider an ***inland marine policy*** here.

Business Auto

What would happen when this happens::

- Accidents on the way to court, jail or a client's home
- Company autos used by agents for personal use
- A vehicle is used in a recovery case, perhaps at high speed.

In many of these instances a ***special business auto policy*** is required

BOUNTY HUNTER LIABILITY AND YOU

Some Basic Rules

Bounty hunters in California must be at least 18 years of age, have no felony convictions, complete fugitive recovery training, hold a current bounty hunter license, and take a bail license exam. They must have ***documentation from the bail agent*** authorizing them to make an arrest, carry license docs at all times and ***not dress or identify themselves as a law enforcement*** officer, including a badge.

In California, recovery agents **may not forcibly enter a suspect's home** or premises, transport a fugitive across state lines without an extradition proceeding and must **notify local law enforcement** at least six hours before they plan to make an arrest of a fugitive.

Bounty Hunter Liability

In anticipation of a good pay day, you already know that bounty hunters have been known to take things a bit too far. Injuries or civil protections might be violated in these cases resulting in a liability.

Victims of bounty hunter misdeeds can certainly **sue the bounty hunter individually or the bail agent that hired them** indirectly under the auspices of personal injury law, civil protections and more. Claims might involve reimbursement of medical expenses, pain-and-suffering or even an injured, innocent bystander, etc.

It may not just be undue force that creates liability. In one case, the hunter put out a wanted poster with alleged inaccuracies. Here, it was the police, relying on the facts in the poster, who used excessive force that resulted in the fugitive's death. The hunters, bail agents, police and the victim's family are still slugging it out in court.

Courts and police involved in the bond are typically untouchable even though they were the party that required the bond, unless the action to arrest the fugitive by police involved excessive force or civil rights claims.

Legal Actions Against Bounty Hunters

Here are just a few of the legal actions taken against bounty hunters, and by extension, the bail agents that hired them:

- Daniel Kear pursued and apprehended Sidney Jaffe at a residence in Canada and returned him to Florida to face trial. Kear was extradited to Canada in 1983, and convicted of kidnapping.
- Several bounty hunters have been arrested for killing the fugitive or apprehending the wrong individuals, mistaking innocent people for fugitives.
- Unlike police officers, they have no legal protections against injuries to non-fugitives and few legal protections against injuries to their targets.¹
- In a Texas case, bounty hunters Richard James and his partner DG Pearson were arrested in 2001 for felony charges during an arrest. The charges were levied by the fugitive and his family, but were later dismissed against the hunters after the fugitive's wife shot a deputy sheriff in another arrest attempt of the fugitive by the county sheriff's department. The hunters sued the fugitive and family, winning the civil suit for malicious prosecution with a judgment amount of \$1.5 million.

Bottom Line

Cases involving hunter negligence can be directly attributed to you the bail agent. Millions can be at stake here so be careful who you hire and know their procedures.

While it is not our job as educators to be arbiters of the hunter you choose, it may be prudent to find one who spends as much effort knowing how to **legally apprehend** a fugitive as the techniques he or she knows about physical apprehension.

MAY 2020 WHITE – PRESUMPTION OF INNOCENCE AT BAIL HEARING

The Christopher White case involved alleged kidnapping and other serious crimes by the defendant. The case is significant because some feel the judge in the bail hearing used facts to determine that White was a threat and should not be released, i.e., some feel the judge issued a guilty decision with no presumption of innocence. However, unlike the Court of Appeal in White, the California Supreme Court did not directly state that the presumption of innocence was inapplicable at bail hearings. Nor did the California Supreme Court in White strongly indicate (again, unlike the Court of Appeal) that persons presumed to be guilty at a bail hearing.

Does White help establish there is a presumption of guilt at bail hearings – or at least no presumption of innocence? This may be up to the Supreme Court still to decide, although it has already rendered a similar decision in 2006: “That an individual is charged with a crime cannot, as a constitutional matter, give rise to any inference that he is more likely than any other citizen to commit a crime if he is released from custody. Defendant is, after all, constitutionally presumed to be innocent pending trial, and innocence can only raise an inference of innocence, not of guilt.”

DEC 2019 -- BAIL CONTRACT PROVISIONS MAY NOW BE UNENFORCEABLE

In a groundbreaking 2020 decision, a court has awarded a settlement to a family said to be a victim of **undue bounty hunter violence**. The case was brought by the victim and the ACLU as part of their attempts to break up the bail industry which they consider to be exploitive. The hunters, bail agency and its insurer were sued. As part of the ACLU actions and court decision, certain contract provisions in the bail agency contract were deemed to be null and unenforceable. Experts believe the decision has implications for bail contracts nationwide.

The Provisions Found Null and Unenforceable

The first provision essentially prevents consumers from **taking the bail industry to court**, and the second requires consumers to outright **surrender their legal rights**.

The Case

In 2017, six bounty hunters, hired by a bail bondman, broke down the door of Eugene Mitchell, who failed to appear in court relating to traffic charges.

Per Mitchell . . . "When those bounty hunters broke into our house, they terrorized us," said Eugene Mitchell. "While we're thankful to receive this settlement, my wife and daughter still don't feel safe in our home. I know we're not the only ones treated like this by bail companies, and I hope by filing this lawsuit we can help keep this from happening to more people."

Why These Provisions May Be Unenforceable NATIONWIDE

As mentioned, Mitchell, with the help of the ACLU, sued not only the bounty hunters but also the bail bondsman and insurance companies, alleging they were all engaged in a joint enterprise under many violations of law, including the ***federal Racketeer Influenced and Corrupt Organizations Act (RICO)***. The case achieved a first-of-its-kind ruling when the court denied a motion to dismiss and allowed the RICO claims to move forward.

The case was won based on, in part, the RICO laws. ***RICO is federal law*** with nationwide implications on this decision.

NOV 2018 – SUPREME COURT STAYS OUT OF STATE'S NO-BAIL LAWS

The Supreme Court has declined to get involved in the debate over limiting the use of money bail to control who is freed from jail prior to trial.

The case involved a challenge to New Jersey's system which has all but eliminated the use of money bail. Instead, defendants are evaluated via risk assessment tools and freed under various levels of monitoring or detained if prosecutors make a case to a judge that there's no other way to make sure the defendant shows up for court or is a public threat. People are no longer being jailed in New Jersey simply for lack of money.

As a result of these reforms Bright Holland says he was denied the opportunity for cash bail and instead forced to home detention and electronic monitoring as a condition of release. He argued that this violated his Fourth and Eight Amendment rights. The U.S. Court of Appeals for the Third District rejected these arguments, stating that the Eighth Amendment didn't obligate the use of cash or money bail as a mechanism for prerelease and that his pretrial monitoring was reasonable under the Fourth Amendment. Holland petitioned the Supreme Court to hear his argument, but in late 2018 the justices turned him away.

That shouldn't necessarily be taken as a Supreme Court stamp of approval for New Jersey's reforms. These changes to the court system are still very new. There may be future court rulings, from New Jersey or elsewhere, that could push the Supreme Court to weigh in on the issue.

JANUARY 2018 – HUMPHREY -- EXCESSIVE BAIL FOR THE CRIME

In January 2018, the First District Court of Appeal ruled that the money bail system in California violated due process and equal protection by imprisoning Kenneth

Humphrey prior to trial solely because he could not afford to pay bail. The ruling required Superior Court judges to consider both a defendant's ability to pay and non-monetary alternatives to money bail when setting an amount of money bail or setting conditions of release. It also prohibited detention that was based solely on a defendant's inability to pay.

The California Supreme Court decided to review the case and requested briefing on the constitutionality of the money bail system as well as on the limits of preventive detention under the California Constitution. This has yet to happen.

The parties' merits briefing was completed in September of 2018 and amicus briefs were filed in October 2018. Respondent Mr. Humphrey, as well as numerous amici, argue that the Court of Appeal was correct in concluding that the money bail system violates due process and equal protection. Respondent and numerous amici, including the ACLU, also argue that the California Constitution limits courts' ability to preventively detain persons prior to trial and permits preventive detention only for the most serious charges and only where a court has found clear evidence that release would likely result in harm to another person.

2017 UPDATE

JULY 2016- BAIL BONDSMEN ARRESTED IN SEX FOR BAIL SCANDAL

Say what? A bondsman was being held without bail for allegedly freeing women (not a woman) from jail on the condition that they would have sex or perform sexual acts on him. Over twenty women have come forward as victims.

DECEMBER 2015- BAY AREA BAIL AGENT ARRESTED FOR ALLEGED EXTORTION

A bondsman was accused of extortion by grossly inflating his original \$5,000 to over \$100,000 in lien fees, penalties and the like. The bondsman was released on his own recognizance but the prosecutor encouraged other potential victims to come forward.

AUGUST 2015- FIVE BAY AREA COUNTIES INVOLVED IN BAIL AGENT SWEEP THAT YIELDS MORE THAN THIRTY ARRESTS

The agents were allegedly trying to "scoop business away from competitors by rewarding jail inmates with money added to their jail accounts for providing information about newly booked individuals in the jails". The investigation also found that unlicensed individuals were transacting bail business and that one agency had employed a convicted felon, which is a violation of the Bail Fugitive Recovery Act.

JULY 2015- APPEALS COURT FINDS INTERNATIONAL FIDELITY LIABLE FOR BAIL AGENT'S FRAUD

On July 9, 2015 the Appeals Court of Massachusetts found that International Fidelity Insurance Company was, on the basis of vicarious liability, responsible for their bail agent conducting improper business. For years, the bondsman had been charging defendants bond premiums and collecting additional cash and collateral that was never escrowed and not there to give back to the bond customers.

2015 UPDATE

JUNE 2014 - EXONERATION OF BOND DENIED WHEN DEFENDANT WAS DENIED RE-ENTRY TO THE COUNTRY

The court can exonerate a surety's bail bond obligations in certain circumstances. One of those circumstances is when the defendant has been deported. In the State vs. All Star Bail Bonds, the defendant left the country voluntarily but was denied admission when he tried to return. Was he considered deported? The court said NO. The defendant here was excluded, not deported. And the district court may not exonerate a bond without a statutory basis for doing so. Accordingly, the court denied the surety's petition for extraordinary relief from the district court's order denying the motion for exoneration.

JANUARY 2013 - EXTRADITION POSSIBLE . . . JUST "NOT FEASIBLE"

A surety's bond could be exonerated where the defendant skips the country and extradition is not possible. In The People vs. International Fidelity, the courts determined that there are now cases where a surety will pay, even though the defendant COULD BE extradited. What happened? The powers to be simply determined that for the crime committed, it was NOT FEASIBLE to extradite. The bottom line? The surety pays. Here's the background:

MARCH 2012 -- RESIDENTS AWARDED \$450,000 AFTER BAIL AGENT INVADES THEIR PRIVACY

A jury slapped Fairfield bail bondsman with a \$450,000 judgment for showing up uninvited to a customer's home, using verbally-abusive language, threats and gun flashing. The police report and report to the Department of Insurance resulted in criminal charges and an effort by the state to revoke the agent's bail bond license. The criminal charges were dropped and the bondsmen won against the city but he was countersued by the customer who received punitive damages and legal fees.

FEBRUARY 2012 -- BAIL AGENT CHARGED WITH THEFT

A bail bondsman was arrested and charged with theft after police say she is accused of stealing the personal items of a client while they were being booked into

a local jail. The claim is that the victim "had a purse that contained 8,000 Euros, valued at approximately \$11,500 U.S. She also had in her possession approximately \$500 in U.S. currency as well as a cell phone.

JUNE 2011 - MAN ARRESTED AFTER POSING AS AN OFFICER IN BAIL SCAM

A young San Francisco resident falsely posed as an officer in order to gain information about inmates that were recently released from jail. He would then approach his victims, claiming to be a bondsman, and tell them that their bail would be going up and if they failed to pay him they would be re-arrested.

Authorities say the man made contact with all of the bondsmen in the Sacramento area. There is no definite number of how many victims were taken in by this scam.