



## Folsom City Council Staff Report

<b>MEETING DATE:</b>	1/11/2022
<b>AGENDA SECTION:</b>	Consent Calendar
<b>SUBJECT:</b>	Resolution No. 10788 – A Resolution Opposing SB 262 (Hertzberg) Bail
<b>FROM:</b>	Police Department

### **RECOMMENDATION / CITY COUNCIL ACTION**

Staff recommends the City Council approve Resolution No. 10788 – A Resolution Opposing SB 262 (Hertzberg) Bail.

### **BACKGROUND / ISSUE**

Current law requires the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail. Superior court judges consider the seriousness of the offense charged and assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint. SB 262 is being proposed as one of the latest in series of bail reform efforts and follows the rejection of Proposition 25 (2020) and SB 10 (2018).

#### **SB 10 (2018)**

In 2018, the California State Legislature approved SB 10 to eliminate the (then) current bail system. Democrats (67 out of 81) supported SB 10, while only one of 39 Republican supported the legislation. SB 10 was designed to make California the first state to end the use of cash bail for all detained suspects awaiting trials. SB 10 would have replaced the state's cash bail system with risk assessments to determine whether a detained suspect should be granted pretrial release and under what conditions release would be granted. (Then) California Gov. Jerry Brown signed SB 10 on August 28, 2018. At that time, three ACLU executives expressed disappointment in the signing of SB 10, noting that SB 10 was not the model for pretrial justice and racial equity that California should strive for.

### **Proposition 25 (2020)**

A veto referendum (which is a type of citizen-initiated ballot measure that asks voters whether to uphold or repeal a law that has been passed by the state legislature ) to overturn SB 10 was filed the day after SB 10 was signed by the Governor. This veto referendum would later become Proposition 25. In the 2020 General Election, voters rejected Proposition 25 (thereby rejecting SB 10) by over 56%.

### **SB 262 (2021)**

In January 2021, SB 262 was introduced by Senators Hertzberg and Skinner (coauthored by Assembly Member Bonta and Senators Bradford and Wiener) to require bail to be set at \$0 for all offenses except, among others, serious or violent felonies, violations of specified protective orders, battery against a spouse, sex offenses, and driving under the influence. SB 262 would require the Judicial Council to prepare, adopt, and annually revise a bail schedule for the exempt offenses. The bill would state the intent of the Legislature to enact further changes to current law to ensure that a defendant is not detained pending trial simply due to an inability to pay for the amount of bail in the statewide schedule. The bill would prohibit costs relating to conditions of release on bail from being imposed on persons released on bail or on their own recognizance. The bill would require the sheriff, police, and court employees to approve and accept bail in the amount fixed by the bail schedule.

### **ANALYSIS**

SB 262 will make Zero Bail permanent throughout California and will make many crimes eligible for automatic release from jail. In addition, this bill sets strict terms for release on a suspect's ability to pay, meaning many arrested for crimes – including hate crimes, gun crimes and drug dealing – will be out on the streets with Zero Bail. SB 262 would require the court, prior to setting bail, to consider whether nonfinancial conditions will reasonably protect the public and the victim and reasonably assure the arrestee's presence at trial.

California's experiment with "Zero Bail" during the coronavirus pandemic had disastrous results as many defendants were arrested, released back on the streets, committed new crimes within hours, and were then rearrested the same day. Currently, California is experiencing a dangerous crime wave as homicides increased by 31 percent in 2020, resulting in the deadliest year since 2007 according to the California Department of Justice. Furthermore, a University of California study of San Francisco's court system—which utilizes a model similar to SB 262—concluded that 55 percent of individuals released before trial allegedly committed new crimes while free and one-sixth of individuals committed a violent offense. Small businesses are particularly vulnerable to crime because they often lack the resources to prevent criminal activity; the average cost per robbery was more than \$800 in 2019, according to the National Retail Federation.

It is important to note that SB 262 violates the constitutional separation of powers because California's constitution vests the power to set bail exclusively with the county courts and not the Legislature. This bill attempts to overturn the will of the voters by attempting to pass legislation previously defeated via a referendum.

The California Police Chiefs Association opposes SB 262, as does the Association of California Cities Allied with Public Safety. The League of California Cities has currently taken a "watch" position on the bill.

**ATTACHMENT**

Resolution No. 10788 – A Resolution Opposing SB 262 (Hertzberg) Bail

Submitted,

Richard D. Hillman, Chief of Police

**RESOLUTION NO. 10788**

**A RESOLUTION OPPOSING SB 262 (HERTZBERG) BAIL**

**WHEREAS**, current law requires the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail. Superior court judges consider the seriousness of the offense charged and assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint; and

**WHEREAS**, in 2018, the California State Legislature approved SB 10 to eliminate the (then) current bail system. SB 10 was designed to make California the first state to end the use of cash bail for all detained suspects awaiting trials and would have replaced the state's cash bail system with risk assessments to determine whether a detained suspect should be granted pretrial release and under what conditions release would be granted; and

**WHEREAS**, a veto referendum to overturn SB 10 was filed the day after SB 10 was signed by the Governor. This veto referendum would later become Proposition 25; and

**WHEREAS**, in the 2020 General Election, voters rejected Proposition 25 by over 56%.

**WHEREAS**, SB 262 is now being proposed by the California State Legislature as one of the latest in series of bail reform efforts and follows the rejection of Proposition 25 (2020); and

**WHEREAS**, California's experiment with "Zero Bail" during the coronavirus pandemic had disastrous results as many defendants were arrested, released back on the streets, committed new crimes within hours, and were then rearrested the same day; and

**WHEREAS**, SB 262 will make Zero Bail permanent throughout California and will make many crimes eligible for automatic release from jail; and

**WHEREAS**, SB 262 sets strict terms for release on a suspect's ability to pay, meaning many arrested for crimes – including hate crimes, gun crimes and drug dealing – will be out on the streets with Zero Bail; and

**WHEREAS**, California is experiencing a dangerous crime wave as homicides increased by 31 percent in 2020, resulting in the deadliest year since 2007 according to the California Department of Justice; and

**WHEREAS**, a University of California study of San Francisco's court system—which utilizes a model similar to SB 262—concluded that 55 percent of individuals released before trial allegedly committed new crimes while free and one-sixth of individuals committed a violent offense; and

**WHEREAS**, SB 262 violates the constitutional separation of powers because California's constitution vests the power to set bail exclusively with the county courts and not the Legislature. As such, SB 262 is an unconstitutional attempt to overturn the will of the voters by attempting to pass legislation previously defeated via a referendum; and

**NOW, THEREFORE BE IT RESOLVED** that the City of Folsom opposes SB 262 (Hertzberg) Bail.

**PASSED AND ADOPTED** on this 11<sup>th</sup> day of January 2022, by the following roll-call vote:

AYES: Councilmember(s):  
NOES: Councilmember(s):  
ABSENT: Councilmember(s):  
ABSTAIN: Councilmember(s):

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Kerri M. Howell, MAYOR

ATTEST:

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Christa Freemantle, CITY CLERK

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