STATEMENT OF OPPOSITION TO CALIFORNIA PROPOSITION 25

Essie Justice Group, the country’s leading organization of women with incarcerated loved ones, opposes Proposition 25 (Prop. 25) because it would put California on a path to more incarceration, further entrench racial, socio-economic, and gender bias in our pretrial system, and increase funding for policing and incarceration. In voting on Prop 25, California voters will decide whether Senate Bill 10 (SB 10), a bail reform bill, will go into effect. SB 10 passed in 2018 and would eliminate money bail, replacing it with risk assessment tools that assess a person’s so-called risk to society. Women with incarcerated loved ones are deeply impacted by the fate of SB 10, as 1 in 4 women has a family member behind bars, and nearly 1 in 2 Black women has a family member in prison.1 Arguably, women with incarcerated loved ones have the most to benefit from bail reform that removes money from the system, as more than half (54%) of women are unable to afford the bail set for an incarcerated loved one and the remaining half (45%) have paid a loved one’s bail.2 We know deeply the financial and emotional toll that bail takes on our lives which ranges from causing homelessness, to making sacrifices in our own educational and professional goals in order to pay, or to try to pay, from our loved ones' freedom. With all of this at stake, we remain opposed to SB 10, as we did in 2018 for reasons herein articulated.

Although SB 10 is not the solution to bail reform in California, three components of the legislation would have a positive effect on the lives of women with incarcerated loved ones.

- First, it would allow individuals who have been charged with specified misdemeanors to be released on their own recognizance, without the requirement of undergoing a risk assessment. SB 10 also creates opportunities for individuals who are classified as “low risk” and some individuals classified as “medium risk” to be released on their own recognizance, depending on how each local rule sets their risk threshold.
- Second, it would require transparent data reporting on the implementation of SB 10. Specifically SB 10 requires California courts to report data twice a year to the Judicial Council pertaining to when individuals are detained, how many people are released on their own recognizance, a breakdown of the risk classifications, among others to be compiled in an annual report submitted to the Governor and the CA Legislature. It would also require the Board of State and Community Corrections to conduct an independent evaluation of the impact of SB 10 on race, ethnicity, gender, and income level which would be submitted to the Secretary of the State Senate and the Chief Clerk of the State Assembly.

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2 Hedwig Lee et al., Racial Inequalities in Connectedness to Imprisoned Individuals in the United States, 12 DU BOIS REV. 269 (2015).
Third, and most notably, SB 10 would eliminate the use of money bail as a condition for release. Under the current bail system, people have the option of paying the monetary bail amount set by a judge, so that our loved ones can be released before their trial. Removing the financial burden placed on women from bail is significant and not something we take lightly. We are deeply committed to ending money bail. However SB 10 would eliminate our only option, albeit an exploitative one, to free a loved one who is held pretrial, replacing it with an even more harmful pretrial system.

While we recognize the various ways in which SB 10 would make some advancements forward, the positives do not outweigh the dangerous and harmful impacts this new system will have on our lives as women with incarcerated loved ones. We oppose Prop 25 for the following reasons:

1. **Proposition 25 would expand judges’ power to incarcerate more of our loved ones for longer periods of time before they are ever convicted of a crime.**

SB 10 would remove the financial burden associated with paying bail and electronic monitoring from women with incarcerated loved ones. However, the tradeoff is for a system that would allow judges to detain our loved ones indefinitely with no other recourse for freedom while their case is being processed. Specifically, SB 10 would expand individual judges’ power over pretrial release by creating a “rebuttable presumption, which would allow judges to rule that no condition of pretrial supervision will reasonably assure public safety”\(^3\) for a very large category of people, primarily people charged with specified felony offenses. This would allow judges to keep people who fell into these narrow categories detained until they go to trial without any option for release. Even more alarming, Human Rights Watch found that between 2011 and 2015, over a quarter-of-a million Californians sat in jail for up to five days, accused of felonies for which evidence was so lacking prosecutors could not bring a case.\(^4\) Being in custody creates a coercive environment in which people plead guilty despite their innocence in order to be released more quickly and significantly reduces the chances of a person’s ability to win their case or get a reduced charge.\(^5\) Additionally, pretrial detention can affect child custody and cause someone to lose their employment and housing. A third (32%) of women with incarcerated loved ones lose their household’s primary source of income when their loved one is incarcerated\(^6\) and 80% of women in jails are mothers, most of them being the primary caretakers of their children.\(^7\) As a result of longer incarceration, women with incarcerated loved ones will also experience increased negative impacts to our health and wellbeing, increased isolation, and take on an extraordinary financial burden to pay for the other enormous costs associated with incarceration, such as childcare, attorney and court fees.

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\(^3\) CAL. PENAL CODE § 27771 (2018).
\(^5\) Id.
\(^6\) GINA CLAYTON ET AL., *supra* at 12.
2. Proposition 25 would require the use of discriminatory risk assessment tools that utilize data generated through race, gender, and socioeconomic bias in the criminal legal system to predict future behavior.

SB 10 would require California courts to use algorithm-based risk assessment tools that are racially biased and do not provide context to a person’s case to determine whether someone will be eligible for release. Risk assessment tools use factors like someone’s entire arrest history, length of residency, or employment to generate a person’s risk to society, ranging from low risk to high risk. Instead of looking at the person as an individual, the context surrounding their case, and their needs, risk assessment tools automatically generate rapid predictions on whether someone will fail to appear for a court date and their risk of rearrest. While these tools claim to be unbiased, bias is inherent because the risk predictions use racist policing practices that heavily police Black and Brown communities as a reason to detain people pretrial. The current overrepresentation of Black people (43%) and Latinx people (20%) in the United States pretrial detention population exemplifies the danger of basing an entire pretrial system off of the same data that has overcriminalized Black and Brown people. More than half of the women incarcerated (61,000 people) in the United States are detained in jails pretrial. Of those, 29% are Black women. The reality is that Black and Brown women will be impacted by risk assessment tools, either through their own incarceration or through the incarceration of a loved one.

3. Proposition 25 would increase public and private funding for mass incarceration, surveillance, and probation departments.

SB 10 would expand the power of local probation departments to oversee and interfere in the lives of people who are legally innocent until proven guilty. SB 10 defines the agencies who receive pretrial services funding so narrowly that probation departments in every county of the state must significantly increase their size and scope, ultimately increasing the resources they receive to surveil our community. While women with incarcerated loved ones may no longer have to pay bail, private sector companies will continue to get rich off of taxpayer’s dollars to pay for the use of risk assessment tools, electronic monitors, supervision services, and other surveillance technology. We do not need or want more surveillance of our bodies or our loved ones’ bodies. Funneling public dollars into a system that runs off of criminalization goes against our goals of divesting from the criminal-legal system and investing in our community needs, particularly the health and wellness needs as women with incarcerated loved ones. While SB 10 may end money bail, it continues to retrench and expand a system that creates commercial incentives that make it profitable to criminalize and incarcerate our loved ones at unprecedented rates.

Voting “No” on Proposition 25 is damage control to ensure that the harmful cash bail industry is not replaced by an even worse system that holds our loved ones indefinitely based on racist risk categorizations. But it is not the end goal. We are fighting for a world where pretrial detention no longer

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exists. A world where women with incarcerated loved ones — primarily Black and Brown— do not have to plead with the system for our loved ones’ freedom or personally bear the fallout for a loved one’s incarceration. A world where everyone is presumed innocent until proven guilty and the criminal legal system doesn’t look differently based on how much money a person has or where they live. A world where our loved ones are free from all cages — physical, electronic, or pervasive surveillance. Voting “No” on Proposition 25 gives us the chance to put forth a new vision for pretrial reform that preserves the presumption that everyone is innocent until proven guilty. We will continue fighting until this is a reality.

Essie Justice Group initially co-sponsored SB 10 in 2018, but ended up opposing the final version of the bill and dropping co-sponsorship. To read more about our opposition to SB 10, please read the statement of opposition we issued in 2018.