



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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August 17, 2012

Hon. Loni Hancock
Member of the Senate
State Capitol, Room 2082
Sacramento, California 95814

Subject: SB 210 (Hancock), as proposed to be amended - Oppose

Dear Senator Hancock:

The Judicial Council respectfully opposes SB 210, which requires that a judge determine at an arraignment whether a defendant charged with a felony, the sentence for which may be served in county jail pursuant to Penal Code Section 1170(h), is eligible for release on his or her own recognizance. The bill sets forth a nonexclusive list of factors a court may, but is not required to consider in granting OR release to ensure that public safety is not compromised and to ensure the defendant's appearance. Mirroring existing law as it relates to individuals arrested or charged with a misdemeanor, the bill requires a judge to set bail if own-recognizance (OR) release will compromise public safety and the judge cannot order OR release with conditions sufficient to reasonably ensure the defendant's appearance. Finally, the bill expands the list of entities that may be responsible for preparing a pretrial investigation report that, if available, may be considered by the court in determining a defendant's eligibility for OR release.

The council believes the bill is unnecessary, inappropriately interferes with judicial discretion, and, despite the fact that the bill describes the factors the court *may* take into consideration in granting OR, effectively *requires* the court to engage in such considerations. More specifically, the council believes:

- The bill creates pressures on the courts to consider OR by expanding and redefining the factors a judge may include in the determination that a defendant would not be eligible for OR.
- SB 210 is unnecessary because current law provides courts with sufficient discretion to consider various factors when weighing whether to release someone and add reasonable conditions to release. Prescribing specific factors and conditions would unnecessarily complicate a longstanding practice, invite litigation, require additional hearings, and impede court discretion.
- Hearings related to consideration of the pretrial investigation reports could be lengthy, invite motions for expert testimony, result in significant delays and additional hearings, all of which contribute to calendar congestion and the further straining of severely limited court resources.
- The bill inadvertently creates grounds for review. Although the bill sets forth conditions the court *may* consider in determining whether a person should be granted, the Judicial Council believes that if OR release is denied, a court's failure to consider each and every factor listed could result in challenges to the court's decision.

For these reasons, the Judicial Council opposes SB 210.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andi Liebenbaum".

Andi Liebenbaum
Senior Governmental Affairs Analyst

ABL/yc

cc: Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor