



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF HUMBOLDT**

**Meara Hattan**  
Court Executive Officer/  
Jury Commissioner

**Kelly L. Neel**  
Presiding Judge

**Timothy A. Canning**  
Assistant Presiding Judge

June 2, 2026

**\*\*\*\*\*NOTICE\*\*\*\*\***

***In re Kowalczyk (2026) 81 Cal.5th 342 (S277910) and Pre-Trial Release***

Article 1, Section 12 of the California Constitution

*Sec. 12. A person shall be released on bail by sufficient sureties, except for:*

*(a) Capital crimes when the facts are evident or the presumption great;*

*(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or*

*(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.*

*Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.*

*A person may be released on his or her own recognizance in the court's discretion. (Added Nov. 5, 1974. Amended June 8, 1982. Amended by Stats.1994, Res. ch. 95 (A.C.A.37) (Prop. 189, approved Nov. 8, 1994).)*

**If you are arrested for a crime, should you be held in jail until you are found guilty, are acquitted, or voluntarily plead guilty? Should you be able to get out of jail by paying money (known as bail), and if so, how much? What, if any, non-financial conditions should be placed upon your release before trial?**

These questions are at the heart of the issue of “pre-trial detention”. On the one hand, keeping an accused in custody may help to protect a crime victim or protect the community, and ensures that the accused will be present for trial. On the other hand, our personal liberty – the freedom from the government being able to lock us up *prior* to being convicted of a crime -- has been a foundational principle of our law and culture for hundreds of years, since before the Magna Carta in 1215. It is enshrined in the U.S. Constitution as well as our state constitution.

In addition to its being a bedrock legal principle, there are powerful social reasons to not keep people in jail before they have been convicted. Pre-trial detention, meaning, there has yet to be a finding of guilt, can cause a person to lose their job, or prevent them from going to school, lose their housing, cause instability for their children or others they may provide care for in the home. If a person is relying on programs, such as SSDI, pre-trial incarceration can cause their income to be cancelled. And, pre-trial detention is expensive – in our county, it costs \$277 per day, per person held in pre-trial detention.

Historically, liberty interests have been addressed through “own recognizance” releases from jail for those accused of minor crimes, and the use of bail (depositing money or other property) for those accused of more serious crimes. A release on bail involves the accused depositing sufficient money or other property with the government to ensure that the accused will return to court, and not commit any new crimes while out of custody. The amount of bail was generally set based upon the crime the accused was charged with – the more serious the crime the higher the bail – and the prospect of whether the accused would return to court (flight risk).

Using a financial condition for release itself presented a thorny question: **should an accused person be held in jail pending trial solely because they cannot afford to pay bail? And, should a wealthier person be released from pre-trial detention solely because they can afford to post bail, even though both persons are charged with the same crime?**

The California Supreme Court recently addressed these questions, in *In re Kowalczyk*. The Court has made it clear that under our Constitution, persons accused of crimes should not be held in pre-trial detention. The exceptions being those identified by Article 1 Section 12 of the Constitution of the state of California.

In those cases, the Court must then determine if there are non-financial conditions of release that can be ordered to assure future court appearances and reasonably protect others. If there are not, then the Court may require bail, but it must be in an amount that the person can reasonably be expected to pay.

FAQ's:

**If an alleged perpetrator is released from jail prior to trial, how can victims be protected?**

The superior courts, in conjunction with the County's pretrial release program, have a number of tools available to help protect victims, including the ability to issue restraining orders, stay away orders, and no-contact orders. In certain circumstances, the court can order that the alleged defendant be supervised by probation officers pending trial, and which may include the use of ankle monitors and other types of monitors. Which tool can be used depends on the specific facts of the case and the availability of resources.

**How about protecting our community?**

Just like protecting victims, the superior court working hand-in-hand with the county has a variety of tools available to help protect the community. In addition to the ones mentioned above, the court can order, for instance, that a defendant in a DUI case install an ignition interlock device on every car they drive, which prevents a vehicle from starting if the sensors detect any amount of alcohol. And, if defendant fails to comply with the conditions of their pre-trial release, that may be grounds for revoking their release, and putting them in jail until trial.

**So, does this eliminate money bail?**

No, but it does reduce the importance of money bail. Money bail can only be imposed where the court concludes that non-financial conditions of release are not sufficient to protect the victim or the community, or are not sufficient to ensure the defendant will be present for trial. But if money bail is imposed as a condition of release, it must be in an amount that the defendant can reasonably afford.

Historically, the amount of bail has been set based on the type of crime alleged, regardless of a defendant's ability to pay that amount, which in turn caused the unfairness of wealthy defendants getting out of jail but poorer defendants remaining in jail. Now, the superior court must take into consideration the ability of a defendant to pay bail when setting the amount of bail. And remember, financial bail is only set in those cases where the court has determined that ***other, non-financial conditions are insufficient to protect victims or the community.***

**Does this mean that everyone accused of a crime will be released from jail prior to trial?**

No, there are still types of crimes for which a person can be held in jail without bail pending trial, such as first-degree murder, certain sex offenses and when a person has used or threatened to use great violence. Further, defendants who have been convicted of a crime, released on parole, and then commit a new crime can also be held without bail.