

# Bail

## ■ Right to Bail

- U.S. Constitution - 8th Amendment – Prohibits excessive bail where bail is proper. Does not establish a right to bail.
- CA constitution (Art. I §12) PC § 1271- In most cases, the defendant has a right to bail before conviction, as a matter of right. Excessive bail may not be required.
- They do not have the right to bail in
  - Capital Offenses,
  - Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that:
    - The person threatened another with GBI and there is substantial likelihood the person would carry out the threat if released
    - For offenses involving violence on another, there is substantial likelihood the person's release would result in GBI to others
  - Holds (parole, probation, extradition, immigration)

# Bail

- Factors the court shall consider:
  - Public safety
  - Seriousness of the offense
  - Defendant's criminal record
  - Flight risk

(Cal. Const. Art. I, Sec. 12 & Sec. 28, subd. (f)(3); PC §1275)

# Bail Schedule

- Lists presumptive monetary amounts for crimes, enhancements, and priors
  - Currently – Can be used in following circs:
    - For serious or violent felonies, court cannot depart from schedule without finding unusual circs (PC §1275(c))
    - For individuals who are arrested w/o warrant to be immediately released without having to appear before a judge (PC §1269b)
    - Starting point for judge issuing bail for arrest warrant
    - Court setting bail provisionally to allow time for assessment of defendant's financial resources andf less restrictive alternative conditions by the pretrial services agency
    - When D doesn't not oppose pretrial detention.

# Bail – Post *Humphrey*

- *In re Humphrey* (2018) 19 Cal. App.5<sup>th</sup> 1006
  - In addition to considering: Public safety, Seriousness of the offense, Defendant's criminal record, & Flight risk...
  - Equal Protection & Due Process of the 14<sup>th</sup> Amendment require the court to make two additional inquiries and findings prior to ordering release conditioned on the posting of money bail:
    - (1) whether the defendant has the financial ability to pay the amount of bail ordered and
    - (2) if not, whether less restrictive conditions of bail are adequate to serve the government's interests.
- Under review by Cal Supremes, BUT
- 8/31/20 Opinion gave above holding precedential value pending final decision