

YOLO COUNTY: POSTED BAIL VS ZERO BAIL ANALYSIS

Yolo County District Attorney's Office

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BACKGROUND

Bail is an amount of money, bond or other type of security that can, in most cases, be deposited with the court by a person who has been arrested and/or charged with a crime, in order to be released from jail and/or remain out of custody until the final disposition of their criminal case or further order of the court. Presumptive bail amounts for specific offenses and enhancements are generally determined pursuant to an annual uniform county bail schedule created by the superior court in each county. After a person is arrested, but before their first appearance in court, they may be able to post the bail amount listed in the bail schedule to secure their release. At the person's first court appearance, the court may: 1) increase, lessen, modify or deny bail; 2) authorize the release of an individual on their own recognizance (OR release) with or without conditions or; 3) release the individual under supervision. Bail amounts and release decisions by the court are typically based on considerations such as: 1) the seriousness of the charged offenses; 2) the defendant's prior criminal record; 3) the probability of the defendant appearing in court if released; 4) the safety of the victim or victim's family; 5) protection of the public and; 6) the defendant's ability to pay.

In early 2020, the World Health Organization, the United States Centers for Disease Control and Prevention, and the State of California declared that the world, country, and state faced a life-threatening pandemic caused by the Covid-19 virus. At that time, there were more than 40,000 confirmed cases of Covid-19 and 500 deaths in the United States. On March 04, 2020, California Governor Gavin Newsom declared a state of emergency. This was followed on March 19, 2020, with an executive order to stay at home.

In an attempt to prevent the transmission and spread of Covid-19 amongst prisoners and jail staff, a statewide "Emergency Bail Policy" was enacted on April 6, 2020, by the California Judicial Council. The Emergency Bail Policy set bail at \$0 (zero dollars) for most misdemeanors and non-violent felonies, with exceptions specifically listed. As a result, most people arrested for qualifying crimes were immediately released from jail after booking without conditions and without further inquiry by the courts. The Emergency Bail Policy was to be in effect for 90 days after the Governor declared the state of emergency lifted.

On June 20, 2020, California's Judicial Council ended the statewide Emergency Bail Schedule, however, individual counties were allowed to make their own decision about keeping similar measures in place. The Yolo County Superior Court opted to continue the use of its own emergency zero bail schedule until May 31, 2021.

This study looks at a random sample of 100 arrested individuals who were released under emergency zero bail in Yolo County and compared their recidivism with a random sample of 100 similarly situated individuals who posted bail in Yolo County between January 2018 to December 2019.

SYNOPSIS

Recidivism during an 18-month period was examined for a random sample of 100 arrested individuals who posted bail in 2018 or 2019, compared to a random sample of 100 arrested individuals who were released on zero bail between April 19, 2020, and May 31, 2021. Offender demographics and original offenses were similar for the comparison groups despite the random sample generator process. Recidivism was counted if the individual was arrested anywhere within 18 months, for at least one new crime, after being previously released.

In this study, individuals released on zero bail were subsequently rearrested for a total of 163% more crimes than individuals released on bail.

The average recidivism rate for those released on zero bail was **78% over 18 months**, while the average recidivism rate for **those released on bail was only 46%**. **Thus, arrested individuals released on zero bail reoffended at an average rate that was 70% higher** than arrestees who posted bail.

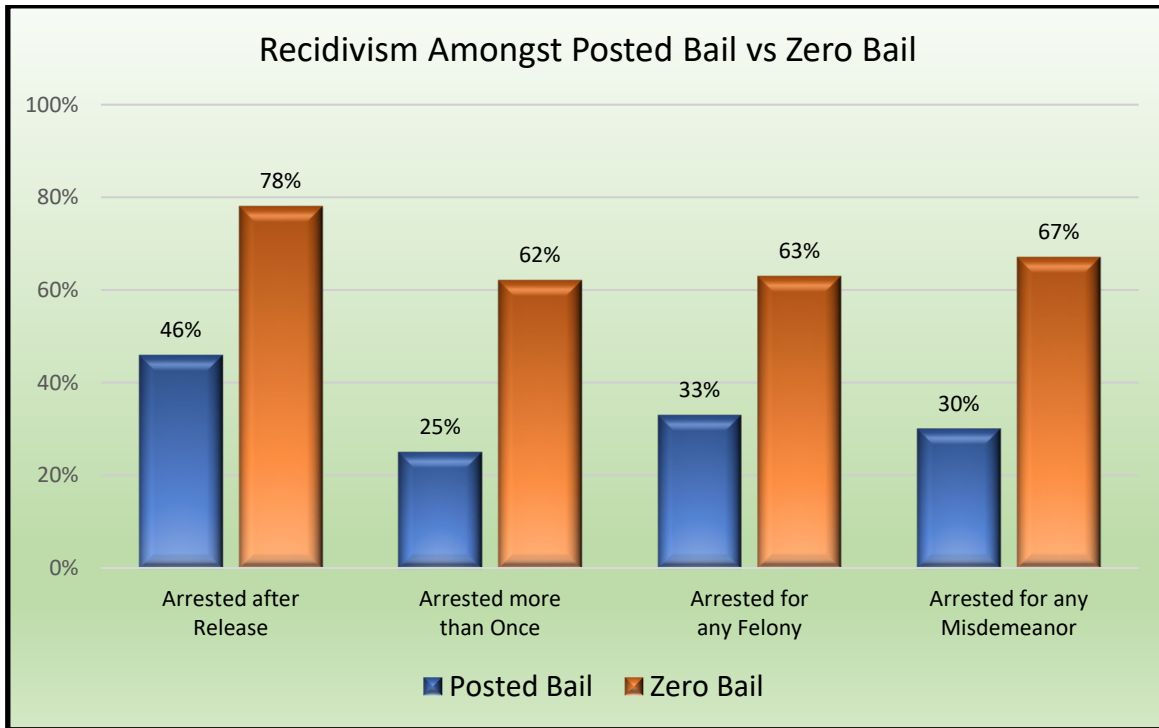
Additional highlights/averages:

- **More new felonies** - Individuals released on zero bail committed new felonies 90% more often than those who posted bail.
- **More new misdemeanors** - Individuals released on zero bail committed new misdemeanors 123% more often than those who posted bail.
- **More multiple arrests** - Individuals released on zero bail were rearrested more than once in eighteen months 148% more often than those released on bail.
- **More new violent offenses** - Individuals released on zero bail committed new violent offenses 200% more often than those who posted bail.

There were many notable differences between those who posted bail and those who were released on zero bail in nearly every metric, as shown below.

RECIDIVISM IN SAMPLES	Posted Bail	Zero Bail
Individuals in Sample	100	100
Individuals arrested w/ in 18 months after release	46%	78%
Individuals not arrested again w/ in 18 months	54%	22%
Individuals arrested for any misdemeanor charge	30%	67%
Individuals arrested for any felony charge	33%	63%
Individuals rearrested more than once in 18 months	25%	62%
Total Number of Separate Arrests Incidents	98	258
Average Number of arrests after bail by arrestees	2.1	3.3

The differences are apparent when shown in a column chart:



DEFINITIONS

The following terms used in this report will be defined as follows:

Bail: The amount of money, bond or other security that an accused person may deposit with the court to be released from jail until their criminal matter is resolved. Bail is reimbursed at the conclusion of the case.

Bail Schedule: What is used to fix an amount of bail upon which a person who is arrested without a warrant may be released from custody prior to the appearing in court and/or until the final disposition of their criminal matter, unless otherwise ordered by the court. The Superior Court of every county has a duty to prepare, adopt and annually revise a uniform county bail schedule.

Emergency Zero Bail: In April 2020, the California Judicial Council imposed a statewide Emergency Bail Schedule, commonly referred to as Zero Bail. This allowed individuals accused of certain crimes to be immediately released from custody without the payment of bail money or bond. Yolo County Superior Court kept an Emergency Zero Bail Schedule until June 2021, when a new bail schedule was enacted.

Arrests: For the purpose of this report, the only arrests that will be considered are arrests for fresh charges. Arrests based on warrants, failure to appear, or probation or parole violations are not included. Note that a probation or parole violation may be based on a fresh charge, so in that case the fresh charge would be counted. An arrest is one incident. There may be several criminal charges based on one arrest.

The only arrests considered in this report were those made within 18 months after the date the individual was released either by posting bail or under emergency zero bail. Arrests were determined by examining each individual's Department of Justice Arrest Sheet, and thus includes arrests made outside of Yolo County.

Misdemeanor Arrests: An arrest for misdemeanor charges, other than those that are for warrants or probation or parole violations.

Felony Arrests: An arrest for felony charges, other than those that are for warrants or probation or parole violations.

Crimes Against: Misdemeanor and Felony arrests are divided into three categories based on who the victim of the crime is:

- **Persons:** An illegal activity that directly endangers a specific person(s). For example, assault or robbery.

- **Property:** An illegal activity that involves property, but people are not physically endangered. For example, theft or vandalism.
- **Society:** An illegal activity without a specific victim. For example, possession of narcotics or driving under the influence.

Sex: Sex is determined according to the individual's booking information at the time of the arrest. Categories are Female or Male. Gender is not tracked on the Yolo County Jail inmate information, and thus is not included in this report.

Race: Race is determined according to the individual's booking information at the time of the arrest. The four categories used in this report are Black, Hispanic, White, and All Other Races combined.

Days to Arrest: This is the number of days between when an individual was released on bail until the date of their first rearrest. Subsequent rearrests were not counted in days.

Risk Assessment Tools: Tools used by judges to assess if an arrested individual poses a risk to public safety or a flight risk when determining whether to release an individual on their own recognizance or setting bail. Individuals on Emergency Zero Bail were released without any conditions and without any type of risk assessment being conducted.

METHODOLOGY

Between April 19, 2020, and May 31, 2021, there were 595 unique individuals that were released from the Yolo County Jail under the Emergency Zero Bail schedule, which did not require any form of cash or security collateral. Between January 01, 2018, and December 31, 2019, there were 147 unique individuals who were released from the Yolo County Jail after posting bail, whether it was by cash, securities, or use of a bail bond company.

In the group that posted bail, only those that were charged with crimes that would have qualified for zero bail were considered to keep groups comparable. A random sample of 100 individuals was selected from each group – those who posted bail, and those released on emergency zero bail – using a random number generator. Information was collected on each of the 200 people that included their release date and their sex and race. The California Department of Justice (DOJ) criminal history records for each person was examined. The following information was collected from DOJ records:

- Any arrests within 548 days (18 months) of their release date, excluding warrants or probation or parole violations. A probation or parole violation could be related to a fresh charge, which would be counted.
- The date of the first arrest following their release.
- The total number of arrest incidents.
- If the individual was arrested on misdemeanor and/or felony charge(s).
- Whether the charges were a crime against persons, property, or society.

This report does not include any identifying information about any individual in the study, just general information on the entire sample group. The demographics of the two sample groups were:

DEMOGRAPHICS	Posted Bail	Zero Bail
Male	79%	86%
Female	21%	14%
Black	14%	16%
Hispanic	41%	36%
White	37%	39%
All Other Races	8%	9%
Average Age	33.5	34.2

The primary charge for which the individual was originally arrested, leading to their bail, was examined. This is only the most serious charge on the arrest. Many people are arrested for more than one charge. The most serious was determined where felony is more serious than misdemeanor, and crimes against persons are more serious than property, which are more serious than against society. No further analysis was done on the initial charge other than noting it:

PRIMARY CHARGE	POSTED BAIL	ZERO BAIL
Abuse	1%	2%
Auto Theft	8%	16%
Burglary	17%	11%
Drugs	23%	19%
Theft	31%	21%
Vandalism	13%	18%
Weapons	7%	10%
Other	0%	3%

RECIDIVISM FOR SELECTED CRIMES

The specific charges were noted for individuals who were arrested for a felony against a person(s) during the 18 months after release. The number of people arrested for each category was equal to or lower than those who posted bail compared to those released on emergency bail. The number of individuals arrested in each category were:

INDIVIDUALS ARRESTED FOR SELECT CRIMES	Posted Bail	Zero Bail
Homicide	0	0
Attempted Homicide	0	2
Kidnapping	0	0
Robbery	2	6
Carjacking	0	0
Sex Assault	1	1
Assault with a Deadly Weapon	5	6
Domestic Violence	0	8

ARRESTS BY CRIME TYPE

Each person who was rearrested during the 18 months had their arrests classified as misdemeanor or felony, and whether it was a crime against a person, property, or society. Note that the sum of number of arrests by victim type do not equal the total number of arrests as one person could be arrested for different charges.

MISDEMEANOR ARRESTS	Posted Bail	Zero Bail
Individuals arrested for any Misdemeanor	28%	67%
Individuals arrested for Misd - Person	1%	11%
Individuals arrested for Misd - Property	11%	33%
Individuals arrested for Misd - Society	25%	55%

FELONY ARRESTS	Posted Bail	Zero Bail
Individuals arrested for any Felony	33%	63%
Individuals arrested for Felony - Person	9%	27%
Individuals arrested for Felony - Property	19%	43%
Individuals arrested for Felony - Society	12%	21%

DAYS TO ARRESTS

Of the people who were arrested within 18 months, the average number of days until their first arrest was 185 days for those who posted bail, and 129 days for those who were released under emergency bail.

ARREST AFTER RELEASE ON BAIL	Posted Bail	Zero Bail
Average days to rearrest	185	128
Individuals arrested within 1 day	0	5
Individuals arrested within 7 days	0	9
Individuals arrested within 30 days	9	16
Individuals arrested within 180 days	28	57
Individuals arrested within 365 days	38	71
Individuals arrested within 548 days (1.5 years)	43	78
Total Number of Separate Arrests	98	258
Average Number of Arrests per Arrested Person	2.1	3.3

CONCLUSION

The Emergency Zero Bail schedule was in effect in Yolo County from April 6, 2020, to May 31, 2021. Bail for select crimes was dramatically reduced, many to zero dollars. The purpose was to minimize crowding in the jail system to help fight the introduction and spread of Covid-19.

Recidivism during an 18-month period was examined for a random sample of 100 arrested individuals who posted bail in 2018 or 2019, compared to a random sample of 100 arrested individuals who were released on zero bail between April 19, 2020, and May 31, 2021. Offender demographics and original offenses were similar for the comparison groups despite the random sample generator process. Recidivism was counted if the individual was arrested anywhere within 18 months, for at least one new crime, after being previously released.

Key findings of this study include:

- Individuals released on zero bail were subsequently rearrested for a total of **163% more crimes** than individuals released on bail.
- Arrested individuals released on **zero bail reoffended at an average rate that was 70% higher** than arrestees who posted bail.
- The average recidivism rate for those released on zero bail was **78% over 18 months**, while the average recidivism rate for those released on bail was only 46%.
- Individuals released on **zero bail committed new felonies 90% more often** than those who posted bail.
- Individuals released on **zero bail committed new misdemeanors 123% more often** than those who posted bail.
- Individuals released on **zero bail were rearrested for two or more new crimes 148% more often** than those released on bail.
- Individuals released on **zero bail committed new violent offenses 200% more often** than those who posted bail.

Even with allowances made for outside influences, it is apparent that recidivism under the emergency zero bail program was much higher than the rate for those who had previously posted some form of bail.

CONSIDERATIONS

There are several considerations to keep in mind in this analysis.

- This study was a sample of the individuals who posted bail and those who were released on emergency zero bail. It is not all inclusive of all individuals. It is likely that certain noteworthy crimes were missed in this sample. For example, it is known there was at least one homicide allegedly committed by a person released on emergency bail, but that person was not randomly selected to be in this study.
- This study examined recidivism in arrests. Whether the arrest led to a conviction was not examined as there are many additional factors to consider, including if the case is still pending, or if there have been plea bargains dismissing some or all charges.
- The Emergency Zero Bail program was designed to reduce crowding in the jail system during the time of the Covid-19 pandemic, thus helping to prevent the transmission and spread of Covid-19 to inmates and staff. It was not intended to rehabilitate. No analysis was done on the jail population before or during emergency bail to determine if the population was affected, nor was any analysis done on the spread of Covid-19 within the jail inmates or staff.
- In March 2021 the California Supreme Court gave an opinion in re Kenneth Humphrey that concluded that some people do not post bail because they can not afford to, and affirmed a District Court of Appeal restricting the use of “cash bail” on defendants who could not afford it. Defendants could still be detained based on articulable facts of a threat of danger to the community or risk of flight. This analysis does not focus on or make any assumptions about bail amounts or the Humphrey Decision.
- This study does not examine how long individuals would have been held in jail had they not posted bail. It does not examine recidivism of those who did not post bail. It only compared those who posted bail to those who were released on emergency zero bail.
- This study does not address any outside factors, including effects of the Covid-19 pandemic, rehabilitation or treatment programs, overall crime rates, etc.
- The Public Policy Institute of California (PPIC) measures recidivism as rearrest within two years. In this analysis, the Emergency Zero Bail was in place until June 2021. As two years had not yet elapsed at the time of this analysis, this report examined rearrests within 18 months of the date they were released on bail for all individuals.
- Arrests were determined by examining the Department of Justice (DOJ) arrest records for each individual. This report does not include Notice to Appear (citations) where the individual was cited and released, but not booked into a jail. Often a person arrested for a misdemeanor charge will be issued a notice to appear citation and not booked into a jail.
- Many rearrests occurred several months after the individual was released on bail. It is quite possible the individual would have had their case adjudicated within those months.
- For additional information regarding Zero dollar bail see <https://yoloda.org/california-judicial-council-emergency-rule/>