

In re Kowalczyk Topline Explainer

In *In re Kowalczyk*, the California Supreme Court unanimously [held](#) that jailing a person pretrial simply because they can't pay money bail is unconstitutional. This holding is based on longstanding and fundamental principles found in both the United States and California Constitutions.

The California Supreme Court also held that the vast majority of people accused of crimes must be released prior to trial under the California Constitution and reaffirmed rigorous procedural protections that the government must follow if it seeks to detain a presumed innocent person. Specifically, consistent with article I, section 12 of the California Constitution, courts cannot detain anyone charged with a misdemeanor or anyone charged with a nonviolent or nonsexual felony. This holding will ensure pretrial release and prevent family separation across all lower level, "nonviolent" felony cases in California. For other individuals charged in more serious cases, the Court held that it is unconstitutional to impose the "significant" harms of pretrial detention—"the risk of losing one's job, home, or custody of a child, the possible connection to reoffending, and costs to the taxpayers of incarcerating defendants"—unless the government makes specific substantive findings and follows strict procedures outlined below.

The California Constitution carefully [describes](#) the circumstances where pretrial detention is appropriate: essentially felony offenses involving violence, sexual conduct, or certain kinds of threats. Even in these cases, the extraordinary decision to detain a presumed innocent person requires that the government prove and the judge find there is: 1) strong evidence of guilt after a full-blown adversarial hearing where the person's attorney can test that evidence; and 2) that release would pose a danger. Posing such a danger sufficient for detention must also mean, the Court made clear in *Humphrey*, that there are no other less restrictive alternatives that could reasonably mitigate that danger. And, the Court emphasized, there are numerous alternatives now available to courts to mitigate risk, and that courts can never be expected to eliminate risk.

But, until now, California courts have often locked people up pretrial, even when only charged with misdemeanors or nonviolent offenses, if they could not pay a financial condition of pretrial "release." This has happened to millions of people in recent years. For example, Mr. Kowalczyk, who was unhoused, used a credit card he found on the floor to buy a hamburger at Five Guys. He was jailed for identity theft on \$75,000 bail. That was unconstitutional, the Supreme Court held. Courts must decide whether to detain people based on whether they are charged with a sufficiently dangerous crime and based on whether there is evidence that they will pose a danger in the pretrial period, not whether they can make a payment. While judges are free to use money bail if they find it will encourage a person to appear in court, it must be affordable, not a means to detain. These strict procedures affirmed in

Kowalczyk thus close a loophole in California law that for many years enabled prosecutors and courts to accomplish detention by using unaffordable money bail without complying with the longstanding findings and procedures required for a transparent order of pretrial detention.

The empirical evidence overwhelmingly supports the Supreme Court's ruling. Pretrial jailing affects people who have been arrested but are presumed innocent, and [1 in 3](#) California arrests never leads to any conviction. Pretrial jailing causes job loss, homelessness, and traumatizing family separation. Researchers have consistently found it is so destabilizing that it *increases* crime. One comprehensive [study](#) of hundreds of thousands of cases found that just seven days or less of pretrial jailing increases a misdemeanor arrestee's chance of committing a felony in the next 18 months by 32%. Meanwhile, money bail has repeatedly been shown to accomplish no increase in court appearances at all, in contrast to strategies as simple as sending text message court reminders, which [boosted](#) court appearances by 26% in New York. Illinois eliminated money bail in 2023, the percent of defendants detained at their initial court hearing decreased from 51% to 9%. Overall rates of failures to appear [decreased](#) after this change, underscoring what the Justices have now held: public safety is only enhanced without money bail.

If you have questions about the ruling or would like to schedule a training to understand the ruling better, please contact: Carson@civilrightscorps.org or Salil@civilrightscorps.org. For additional background to inform reporting or public discussion on money bail and pretrial detention, see this [issue brief](#) by the Center for Just Journalism.