

AMENDED IN ASSEMBLY SEPTEMBER 6, 2017

AMENDED IN ASSEMBLY AUGUST 21, 2017

AMENDED IN ASSEMBLY JULY 5, 2017

AMENDED IN SENATE MARCH 27, 2017

AMENDED IN SENATE JANUARY 17, 2017

## **SENATE BILL**

**No. 10**

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**Introduced by Senators Hertzberg, Allen, ~~Anderson~~, Atkins, Beall, Bradford, Lara, Mitchell, Monning, Skinner, Wieckowski, and Wiener**

(Principal coauthors: Assembly Members Bonta, Bloom, Chiu, Jones-Sawyer, Quirk, and Mark Stone)

December 5, 2016

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An act to amend and repeal Sections 1270, 1270.1, 1270.2, 1288, 1319, and 1319.5 of, to amend, repeal, and add Sections 825, 1269, 1269a, 1269b, 1269c, 1275, 1275.1, 1277, 1278, 1284, 1289, 1295, 1318, and 1318.1 of, and to add Sections 1275a, 1275b, 1318.2, and 1318.3 to, the Penal Code, relating to bail.

### LEGISLATIVE COUNSEL'S DIGEST

SB 10, as amended, Hertzberg. Bail: pretrial release.

Existing law provides for the procedure of approving and accepting bail, and issuing an order for the appearance and release of an arrested person. Existing law requires that bail be set in a fixed amount, as specified, and requires, in setting, reducing, or denying bail, a judge or magistrate to take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a

hearing of the case. Under existing law, the magistrate or commissioner to whom the application is made is authorized to set bail in an amount that he or she deems sufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, and to set bail on the terms and conditions that he or she, in his or her discretion, deems appropriate, or he or she may authorize the defendant's release on his or her own recognizance. Existing law provides that a defendant being held for a misdemeanor offense is entitled to be released on his or her own recognizance, unless the court makes a finding on the record that an own recognizance release would compromise public safety or would not reasonably ensure the appearance of the defendant as required.

This bill would declare the intent of the Legislature to enact legislation that would safely reduce the number of people detained pretrial, while addressing racial and economic disparities in the pretrial system, and to ensure that people are not held in pretrial detention simply because of their inability to afford money bail.

This bill would, beginning January 1, 2020, implement a revised pretrial release procedure. The bill, among other things, would require, with exceptions, that a pretrial services agency conduct a pretrial risk assessment on an arrested person and prepare a pretrial services report that includes the results of the pretrial risk assessment and recommendations on conditions of release for the person immediately upon booking. The bill would require the pretrial services agency to transmit the report to a magistrate, judge, or court commissioner and the magistrate, judge, or court commissioner, within 6 hours, to issue an oral or written order to release the person, with or without release conditions, subject to the person signing a specified release agreement.

The bill would, beginning January 1, 2020, require, if a person is in custody at the time of his or her arraignment, the judge or magistrate to consider the pretrial services report and any relevant information provided by the prosecuting attorney or the defendant and to order the pretrial release of the person, with or without conditions, subject to the person signing a specified release agreement. If the judge or magistrate determines that pretrial release, with or without conditions, will not reasonably ensure the appearance of the person in court as required, the bill would require the judge or magistrate to set monetary bail at the least restrictive level necessary to ensure the appearance of the defendant in court as required. The bill would authorize, if the judge or magistrate has set monetary bail, the person to execute an unsecured appearance

bond, execute a secured appearance bond, or deposit a percentage of the sum mentioned in the order setting monetary bail.

The bill would, beginning January 1, 2020, authorize a prosecuting attorney to file a motion seeking the pretrial detention of a person in certain circumstances, including when the person has been charged with a capital crime and the prosecuting attorney alleges that the facts are evident or the presumption great. The bill would require, if this motion has been filed, a hearing to be held to determine whether to release the person pending trial, unless the person waives the hearing. The bill would authorize the person to be detained pretrial only if the court makes one of several specified findings.

The bill would, beginning January 1, 2020, require each county to establish a pretrial services agency that would be responsible for gathering information about newly arrested persons, conducting pretrial risk assessments, preparing individually tailored recommendations to the court regarding release options and conditions, and providing pretrial services and supervision to persons on pretrial release. ~~The bill would require an unspecified agency to take certain actions relating to the implementation of the revised pretrial release procedure, including, among others, selecting a pretrial risk assessment tool to be used in conducting pretrial risk assessments that meets specified requirements and reviewing collected data to monitor compliance with state law and guidelines relating to pretrial release. The bill would also authorize that agency, beginning January 1, 2020, to take certain actions relating to the implementation of the revised pretrial release procedure, including, among other things, providing training and assistance to judges, prosecutors, defense attorneys, pretrial services agencies, jail staff, and law enforcement agencies. The bill would require the Board of State and Community Corrections, in consultation with that unspecified agency, to develop a plan that establishes statewide requirements for counties relating to annual reporting of pretrial release and detention information. The bill would require the Judicial Council to, among other things, adopt rules of court regarding pretrial risk assessment information and the imposition of pretrial release terms and conditions. The bill would require courts to provide specified information to the Judicial Council, and would require the Judicial Council to provide a biennial report to the Legislature.~~

By imposing additional duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Modernization of the pretrial system is urgently needed in  
4 California, where thousands of individuals held in county jails  
5 across the state have not been convicted of a crime and are detained  
6 while awaiting trial simply because they cannot afford to post  
7 money bail or pay a commercial bail bond company. In 2015, 63  
8 percent of people in California jails were either awaiting trial or  
9 sentencing. *In 2016, the percentage of people in California jails*  
10 *awaiting trial or sentencing rose to 66 percent.* As compared with  
11 the rest of the country, California has relied on pretrial detention  
12 at much higher rates than other states.

13 (b) California's existing pretrial detention practices allow a  
14 person's wealth rather than the person's likelihood of success on  
15 pretrial release to determine whether the person will remain in jail  
16 before the person's case is resolved. Detaining people simply due  
17 to an inability to afford money bail violates the American principles  
18 of equal protection and fundamental fairness. Nationwide, the  
19 majority of people who are unable to meet money bail fall within  
20 the poorest third of society.

21 (c) The consequences of pretrial detention — which include a  
22 greater likelihood of innocent people pleading guilty to a crime,  
23 longer sentences upon conviction, loss of employment, income,  
24 and housing, and traumatic family disruption — disproportionately  
25 affect people of color and low-income people.

26 (d) The commercial money bail system, which requires people  
27 to pay nonrefundable deposits to private companies in order to  
28 secure release from jail, often leaves people in debt and drives

1 them and their families further into poverty. The commercial  
2 money bail system does not improve rates of appearance in court  
3 or enhance public safety.

4 (e) California should follow the lead of the federal government  
5 and jurisdictions across the country that have stopped making  
6 wealth-based decisions on pretrial detention and instead have  
7 shifted to a system that evaluates whether an individual can be  
8 safely returned to the community as well as make required court  
9 appearances, and, if so, under what conditions.

10 (f) It is far more expensive to house a person in jail than to safely  
11 release him or her pending trial with conditions of release or  
12 pretrial supervision.

13 (g) While unnecessary pretrial detention has been found to  
14 increase the likelihood that some defendants will commit new  
15 crimes, appropriate pretrial release can reduce recidivism.

16 (h) Pretrial services programs have already been successfully  
17 implemented in many California jurisdictions and have helped to  
18 reduce pretrial jail populations, save money, increase rates of  
19 appearance in court, and protect the public.

20 (i) Increasing the use of evidence-based practices in pretrial  
21 decisions will provide judges, law enforcement agencies, and  
22 pretrial service providers with additional tools to both assist them  
23 in assessing a defendant's likelihood of success on pretrial release  
24 and to identify and meet the needs of those defendants and the  
25 community to ensure constitutional and statutory objectives.

26 (j) Modernizing pretrial practices will support the goals of the  
27 Public Safety Realignment Act of 2011 by providing additional  
28 options to manage pretrial populations using best practices  
29 developed over many years across many jurisdictions.

30 SEC. 2. It is the intent of the Legislature in enacting this act  
31 to safely reduce the number of people detained pretrial, while  
32 addressing racial and economic disparities in the pretrial system,  
33 and to ensure that people are not held in pretrial detention simply  
34 because of their inability to afford money bail.

35 SEC. 3. Section 825 of the Penal Code is amended to read:

36 825. (a) (1) Except as provided in paragraph (2), the defendant  
37 shall in all cases be taken before the magistrate without unnecessary  
38 delay, and, in any event, within 48 hours after his or her arrest,  
39 excluding Sundays and holidays.

(2) When the 48 hours prescribed by paragraph (1) expire at a time when the court in which the magistrate is sitting is not in session, that time shall be extended to include the duration of the next court session on the judicial day immediately following. If the 48-hour period expires at a time when the court in which the magistrate is sitting is in session, the arraignment may take place at any time during that session. However, when the defendant's arrest occurs on a Wednesday after the conclusion of the day's court session, and if the Wednesday is not a court holiday, the defendant shall be taken before the magistrate not later than the following Friday, if the Friday is not a court holiday.

(b) After the arrest, any attorney at law entitled to practice in the courts of record of California, may, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay to the party aggrieved the sum of five hundred dollars (\$500), to be recovered by action in any court of competent jurisdiction.

(c) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 4. Section 825 is added to the Penal Code, to read:

825. (a) (1) Except as provided in paragraph (2), the defendant shall in all cases be taken before the magistrate without unnecessary delay, and, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays.

(2) When the 48 hours prescribed by paragraph (1) expire at a time when the court in which the magistrate is sitting is not in session, that time shall be extended to include the duration of the next court session on the judicial day immediately following. If the 48-hour period expires at a time when the court in which the magistrate is sitting is in session, the arraignment may take place at any time during that session. However, if the defendant's arrest occurs on a Wednesday after the conclusion of the day's court session and if the Wednesday is not a court holiday, the defendant shall be taken before the magistrate not later than the following Friday, if the Friday is not a court holiday.

1 (b) After the arrest, any attorney at law entitled to practice in  
2 the courts of record of California may, at the request of the detainee  
3 or any relative of the detainee, visit the detainee. Any officer having  
4 charge of the detainee who willfully refuses or neglects to allow  
5 that attorney to visit a detainee is guilty of a misdemeanor. Any  
6 officer having a detainee in charge, who refuses to allow the  
7 attorney to visit the detainee when proper application is made,  
8 shall forfeit and pay to the party aggrieved the sum of five hundred  
9 dollars (\$500), to be recovered by action in any court of competent  
10 jurisdiction.

11 (c) This section shall become operative on January 1, 2020.

12 SEC. 5. Section 1269 of the Penal Code is amended to read:

13 1269. (a) The taking of bail consists in the acceptance, by a  
14 competent court or magistrate, of the undertaking of sufficient bail  
15 for the appearance of the defendant, according to the terms of the  
16 undertaking, or that the bail will pay to the people of this state a  
17 specified sum. Upon filing, the clerk shall enter in the register of  
18 actions the date and amounts of such bond and the name or names  
19 of the surety or sureties thereon. In the event of the loss or  
20 destruction of the bond, the entries so made shall be prima facie  
21 evidence of the due execution of the bond as required by law.

22 (b) Whenever any bail bond has been deposited in any criminal  
23 action or proceeding in a municipal or superior court or in any  
24 proceeding in habeas corpus in a superior court, and it is made to  
25 appear to the satisfaction of the court by affidavit or by testimony  
26 in open court that more than three years have elapsed since the  
27 exoneration or release of said bail, the court must direct that the  
28 bond be destroyed.

29 (c) This section shall remain in effect only until January 1, 2020,  
30 and as of that date is repealed.

31 SEC. 6. Section 1269 is added to the Penal Code, to read:

32 1269. (a) The taking of monetary bail consists in the  
33 acceptance, by a competent court or magistrate, of the undertaking  
34 of sufficient monetary bail for the appearance of the defendant,  
35 according to the terms of the undertaking, or that the bail will pay  
36 to the people of this state a specified sum. Upon filing, the clerk  
37 shall enter in the register of actions the date and amounts of the  
38 bond, the defendant's name, and, if applicable, the name or names  
39 of the surety or sureties thereon. In the event of the loss or

1 destruction of the bond, the entries so made shall be prima facie  
2 evidence of the due execution of the bond as required by law.

3 (b) Whenever any bail bond has been deposited in any criminal  
4 action or proceeding in a municipal or superior court or in any  
5 proceeding in habeas corpus in a superior court, and it is made to  
6 appear to the satisfaction of the court by affidavit or by testimony  
7 in open court that more than three years have elapsed since the  
8 exoneration or release of said bail, the court must direct that the  
9 bond be destroyed.

10 (c) This section shall become operative on January 1, 2020.

11 SEC. 7. Section 1269a of the Penal Code is amended to read:

12 1269a. (a) Except as otherwise provided by law, a defendant  
13 charged in a warrant of arrest with any public offense shall not be  
14 discharged from custody upon bail except upon a written order of  
15 a competent court or magistrate admitting the defendant to bail in  
16 the amount specified in the indorsement referred to in Section  
17 815a, and where an undertaking is furnished, upon a written order  
18 of the court or magistrate approving the undertaking. All those  
19 orders shall be signed by the court or magistrate and delivered to  
20 the officer having custody of the defendant before the defendant  
21 is released. Any officer releasing any defendant upon bail otherwise  
22 than as herein provided shall be guilty of a misdemeanor.

23 (b) This section shall remain in effect only until January 1, 2020,  
24 and as of that date is repealed.

25 SEC. 8. Section 1269a is added to the Penal Code, to read:

26 1269a. (a) Except as otherwise provided by law, a defendant  
27 charged in a warrant of arrest with any public offense shall not be  
28 discharged from custody upon monetary bail except upon a written  
29 order of a competent court or magistrate admitting the defendant  
30 to bail in the amount determined pursuant to subdivision (c) of  
31 Section 1275a and where an undertaking is furnished, upon a  
32 written order of the court or magistrate approving the undertaking.  
33 All those orders shall be signed by the court or magistrate and  
34 delivered to the officer having custody of the defendant before the  
35 defendant is released. Any officer releasing any defendant upon  
36 bail otherwise than as herein provided shall be guilty of a  
37 misdemeanor.

38 (b) This section shall become operative on January 1, 2020.

39 SEC. 9. Section 1269b of the Penal Code is amended to read:



1269b. (a) The officer in charge of a jail in which an arrested person is held in custody, an officer of a sheriff's department or police department of a city who is in charge of a jail or is employed at a fixed police or sheriff's facility and is acting under an agreement with the agency that keeps the jail in which an arrested person is held in custody, an employee of a sheriff's department or police department of a city who is assigned by the department to collect bail, the clerk of the superior court of the county in which the offense was alleged to have been committed, and the clerk of the superior court in which the case against the defendant is pending may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance. If that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.

(d) A court may, by local rule, prescribe the procedure by which the uniform countywide schedule of bail is prepared, adopted, and annually revised by the judges. If a court does not adopt a local rule, the uniform countywide schedule of bail shall be prepared, adopted, and annually revised by a majority of the judges.

(e) In adopting a uniform countywide schedule of bail for all bailable felony offenses the judges shall consider the seriousness

1 of the offense charged. In considering the seriousness of the offense  
2 charged the judges shall assign an additional amount of required  
3 bail for each aggravating or enhancing factor chargeable in the  
4 complaint, including, but not limited to, additional bail for charges  
5 alleging facts that would bring a person within any of the following  
6 sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9,  
7 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5,  
8 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9 of this code, or  
9 Section 11356.5, 11370.2, or 11370.4 of the Health and Safety  
10 Code.

11 In considering offenses in which a violation of Chapter 6  
12 (commencing with Section 11350) of Division 10 of the Health  
13 and Safety Code is alleged, the judge shall assign an additional  
14 amount of required bail for offenses involving large quantities of  
15 controlled substances.

16 (f) The countywide bail schedule shall contain a list of the  
17 offenses and the amounts of bail applicable for each as the judges  
18 determine to be appropriate. If the schedule does not list all  
19 offenses specifically, it shall contain a general clause for designated  
20 amounts of bail as the judges of the county determine to be  
21 appropriate for all the offenses not specifically listed in the  
22 schedule. A copy of the countywide bail schedule shall be sent to  
23 the officer in charge of the county jail, to the officer in charge of  
24 each city jail within the county, to each superior court judge and  
25 commissioner in the county, and to the Judicial Council.

26 (g) Upon posting bail, the defendant or arrested person shall be  
27 discharged from custody as to the offense on which the bail is  
28 posted.

29 All money and surety bonds so deposited with an officer  
30 authorized to receive bail shall be transmitted immediately to the  
31 judge or clerk of the court by which the order was made or warrant  
32 issued or bail schedule fixed. If, in the case of felonies, an  
33 indictment is filed, the judge or clerk of the court shall transmit  
34 all of the money and surety bonds to the clerk of the court.

35 (h) If a defendant or arrested person so released fails to appear  
36 at the time and in the court so ordered upon his or her release from  
37 custody, Sections 1305 and 1306 apply.

38 (i) This section shall remain in effect only until January 1, 2020,  
39 and as of that date is repealed.

40 SEC. 10. Section 1269b is added to the Penal Code, to read:

1 1269b. (a) The officer in charge of a jail in which an arrested  
2 person is held in custody, an officer of a sheriff's department or  
3 police department of a city who is in charge of a jail or is employed  
4 at a fixed police or sheriff's facility and is acting under an  
5 agreement with the agency that keeps the jail in which an arrested  
6 person is held in custody, an employee of a sheriff's department  
7 or police department of a city who is assigned by the department  
8 to collect bail, the clerk of the superior court of the county in which  
9 the offense was alleged to have been committed, a pretrial services  
10 agent, and the clerk of the superior court in which the case against  
11 the defendant is pending, may approve and accept an order  
12 authorizing pretrial release or admitting to bail, to issue and sign  
13 an order for the release of the arrested person, and to set a time  
14 and place for the appearance of the arrested person before the  
15 appropriate court and give notice thereof.

16 (b) Except as provided in Section 821, a person who is arrested  
17 and booked into jail for a violent felony, as defined in subdivision  
18 (c) of Section 667.5, shall not be considered for release until the  
19 person appears before a judge or a magistrate for a hearing in  
20 accordance with Section 1275a or 1275b. The pretrial services  
21 agency shall not conduct a risk assessment or prepare a pretrial  
22 services report for any person who is arrested and booked into jail  
23 for a violent felony except in accordance with subdivision (f) of  
24 Section 1275a.

25 (c) Except as provided in Section 821, the pretrial services  
26 agency shall, within 24 hours of arrest, conduct a risk assessment  
27 on a person arrested and booked into jail for one of the following  
28 offenses and prepare a pretrial services report with  
29 recommendations for conditions of release, however, the person  
30 shall not be considered for release until the person appears before  
31 a judge or magistrate for a hearing in accordance with Section  
32 1275a or 1275b:

33 (1) A serious felony, as defined in subdivision (c) of Section  
34 1192.7, except a violation of subdivision (a) of Section 460.

35 (2) A violation of subdivision (c) of Section 136.1, or a violation  
36 of Section 262, 273.5, or 646.9.

37 (3) A violation of paragraph (1) of subdivision (e) of Section  
38 243.

1 (4) A violation of Section 273.6 if the detained person is alleged  
2 to have made threats to kill or harm, engaged in violence against,  
3 or gone to the residence or workplace of, the protected party.

4 (5) Any felony committed while the person is on pretrial release  
5 for a separate offense.

6 (d) Except as provided in subdivisions (b) and (c) of this section  
7 and Section 821, if a person is arrested and booked into jail, the  
8 pretrial services agency shall, immediately upon booking and,  
9 except where physically impossible, no later than six hours after  
10 booking, conduct a pretrial risk assessment on the person and  
11 prepare a pretrial services report with recommendations for  
12 conditions of release.

13 (e) If a person who is arrested and booked for a misdemeanor  
14 is not first released pursuant to Section 853.6, and except as  
15 otherwise provided in subdivisions (c) and (f), the person shall be  
16 released by the pretrial services agency subject to signing a release  
17 agreement under Section 1318 without further conditions. A person  
18 who is arrested and booked for a misdemeanor and who is currently  
19 on pretrial release with or without conditions shall not be eligible  
20 for release under this subdivision and shall instead be considered  
21 for release pursuant to subdivision (f).

22 (f) (1) Except as otherwise provided in subdivisions (b), (c),  
23 and (e) of this section and Section 821, upon completion of the  
24 pretrial risk assessment and preparation of a pretrial services report  
25 with recommendations for conditions of release, the pretrial  
26 services agency shall immediately transmit the pretrial services  
27 report and recommendations on conditions of release to a  
28 magistrate, judge, or court commissioner. The magistrate, judge,  
29 or court commissioner shall, no later than six hours after receipt  
30 of the pretrial services agency's pretrial risk assessment and pretrial  
31 services report with recommendations for conditions of release,  
32 issue an oral or written order for release subject to a release  
33 agreement under Section 1318 without further conditions or subject  
34 to a condition or conditions in accordance with Section 1275a.

35 (2) The fact that the court has not received the report required  
36 under this section shall not preclude release pursuant to this  
37 subdivision.

38 (g) When an arrested person is released from custody under this  
39 section, the court in which the charge is pending may, upon a  
40 petition by either party alleging that there has been a change in

1 circumstances, amend the release order to impose different or  
2 additional conditions of release at the time of arraignment.

3 (h) If the judge or magistrate orders the pretrial release of a  
4 person under this section, the person shall be released with or  
5 without conditions in accordance with Section 1318.

6 (i) An arrested person who is not released under this section  
7 shall be considered for release pursuant to Section 1275a or 1275b  
8 within the time period prescribed in Section 825.

9 (j) The judicial duties to be performed under this section are  
10 “subordinate judicial duties” within the meaning of Section 22 of  
11 Article VI of the California Constitution and may be performed  
12 by appointed officers such as court commissioners.

13 (k) This section shall become operative on January 1, 2020.

14 SEC. 11. Section 1269c of the Penal Code is amended to read:

15 1269c. (a) If a defendant is arrested without a warrant for a  
16 bailable felony offense or for the misdemeanor offense of violating  
17 a domestic violence restraining order, and a peace officer has  
18 reasonable cause to believe that the amount of bail set forth in the  
19 schedule of bail for that offense is insufficient to ensure the  
20 defendant’s appearance or to ensure the protection of a victim, or  
21 family member of a victim, of domestic violence, the peace officer  
22 shall prepare a declaration under penalty of perjury setting forth  
23 the facts and circumstances in support of his or her belief and file  
24 it with a magistrate, as defined in Section 808, or his or her  
25 commissioner, in the county in which the offense is alleged to have  
26 been committed or having personal jurisdiction over the defendant,  
27 requesting an order setting a higher bail. Except where the  
28 defendant is charged with an offense listed in subdivision (a) of  
29 Section 1270.1, the defendant, either personally or through his or  
30 her attorney, friend, or family member, also may make application  
31 to the magistrate for release on bail lower than that provided in  
32 the schedule of bail or on his or her own recognizance. The  
33 magistrate or commissioner to whom the application is made is  
34 authorized to set bail in an amount that he or she deems sufficient  
35 to ensure the defendant’s appearance or to ensure the protection  
36 of a victim, or family member of a victim, of domestic violence,  
37 and to set bail on the terms and conditions that he or she, in his or  
38 her discretion, deems appropriate, or he or she may authorize the  
39 defendant’s release on his or her own recognizance. If, after the  
40 application is made, no order changing the amount of bail is issued

1 within eight hours after booking, the defendant shall be entitled  
2 to be released on posting the amount of bail set forth in the  
3 applicable bail schedule.

4 (b) This section shall remain in effect only until January 1, 2020,  
5 and as of that date is repealed.

6 SEC. 12. Section 1269c is added to the Penal Code, to read:

7 1269c. (a) If a defendant is arrested without a warrant for a  
8 bailable felony offense or for the misdemeanor offense of violating  
9 a domestic violence restraining order, and a peace officer has  
10 reasonable cause to believe that release subject to a release  
11 agreement under Section 1318 without further conditions is  
12 insufficient to ensure the defendant's appearance or to ensure the  
13 protection of a victim, or family member of a victim, of domestic  
14 violence, the peace officer shall, no later than six hours after the  
15 arrest, prepare a declaration under penalty of perjury setting forth  
16 the facts and circumstances in support of his or her belief and file  
17 it with a magistrate, as defined in Section 808, or his or her  
18 commissioner, in the county in which the offense is alleged to have  
19 been committed or having personal jurisdiction over the defendant,  
20 requesting an order pursuant to subdivision (f) of Section 1269b  
21 imposing a condition or conditions of release.

22 (b) This section shall become operative on January 1, 2020.

23 SEC. 13. Section 1270 of the Penal Code is amended to read:

24 1270. (a) Any person who has been arrested for, or charged  
25 with, an offense other than a capital offense may be released on  
26 his or her own recognizance by a court or magistrate who could  
27 release a defendant from custody upon the defendant giving bail,  
28 including a defendant arrested upon an out-of-county warrant. A  
29 defendant who is in custody and is arraigned on a complaint  
30 alleging an offense which is a misdemeanor, and a defendant who  
31 appears before a court or magistrate upon an out-of-county warrant  
32 arising out of a case involving only misdemeanors, shall be entitled  
33 to an own recognizance release unless the court makes a finding  
34 on the record, in accordance with Section 1275, that an own  
35 recognizance release will compromise public safety or will not  
36 reasonably assure the appearance of the defendant as required.  
37 Public safety shall be the primary consideration. If the court makes  
38 one of those findings, the court shall then set bail and specify the  
39 conditions, if any, whereunder the defendant shall be released.

1 (b) Article 9 (commencing with Section 1318) shall apply to  
2 any person who is released pursuant to this section.

3 (c) This section shall remain in effect only until January 1, 2020,  
4 and as of that date is repealed.

5 SEC. 14. Section 1270.1 of the Penal Code is amended to read:

6 1270.1. (a) Except as provided in subdivision (e), before any  
7 person who is arrested for any of the following crimes may be  
8 released on bail in an amount that is either more or less than the  
9 amount contained in the schedule of bail for the offense, or may  
10 be released on his or her own recognizance, a hearing shall be held  
11 in open court before the magistrate or judge:

12 (1) A serious felony, as defined in subdivision (c) of Section  
13 1192.7, or a violent felony, as defined in subdivision (c) of Section  
14 667.5, but not including a violation of subdivision (a) of Section  
15 460 (residential burglary).

16 (2) A violation of Section 136.1 where punishment is imposed  
17 pursuant to subdivision (c) of Section 136.1, Section 262, 273.5,  
18 or 422 where the offense is punished as a felony, or Section 646.9.

19 (3) A violation of paragraph (1) of subdivision (e) of Section  
20 243.

21 (4) A violation of Section 273.6 if the detained person made  
22 threats to kill or harm, has engaged in violence against, or has gone  
23 to the residence or workplace of, the protected party.

24 (b) The prosecuting attorney and defense attorney shall be given  
25 a two-court-day written notice and an opportunity to be heard on  
26 the matter. If the detained person does not have counsel, the court  
27 shall appoint counsel for purposes of this section only. The hearing  
28 required by this section shall be held within the time period  
29 prescribed in Section 825.

30 (c) At the hearing, the court shall consider evidence of past court  
31 appearances of the detained person, the maximum potential  
32 sentence that could be imposed, and the danger that may be posed  
33 to other persons if the detained person is released. In making the  
34 determination whether to release the detained person on his or her  
35 own recognizance, the court shall consider the potential danger to  
36 other persons, including threats that have been made by the  
37 detained person and any past acts of violence. The court shall also  
38 consider any evidence offered by the detained person regarding  
39 his or her ties to the community and his or her ability to post bond.

(d) If the judge or magistrate sets the bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, the judge or magistrate shall state the reasons for that decision and shall address the issue of threats made against the victim or witness, if they were made, in the record. This statement shall be included in the record.

(e) Notwithstanding subdivision (a), a judge or magistrate, pursuant to Section 1269c, may, with respect to a bailable felony offense or a misdemeanor offense of violating a domestic violence order, increase bail to an amount exceeding that set forth in the bail schedule without a hearing, provided an oral or written declaration of facts justifying the increase is presented under penalty of perjury by a sworn peace officer.

(f) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 15. Section 1270.2 of the Penal Code is amended to read:

1270.2. (a) When a person is detained in custody on a criminal charge prior to conviction for want of bail, that person is entitled to an automatic review of the order fixing the amount of the bail by the judge or magistrate having jurisdiction of the offense. That review shall be held not later than five days from the time of the original order fixing the amount of bail on the original accusatory pleading. The defendant may waive this review.

(b) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 16. Section 1275 of the Penal Code is amended to read:

1275. (a) (1) In setting, reducing, or denying bail, a judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a hearing of the case. The public safety shall be the primary consideration. In setting bail, a judge or magistrate may consider factors such as the information included in a report prepared in accordance with Section 1318.1.

(2) In considering the seriousness of the offense charged, a judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant.



(b) In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, a judge or magistrate shall consider the following: (1) the alleged amounts of controlled substances involved in the commission of the offense, and (2) whether the defendant is currently released on bail for an alleged violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.

(c) Before a court reduces bail to below the amount established by the bail schedule approved for the county, in accordance with subdivisions (b) and (c) of Section 1269b, for a person charged with a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. For purposes of this subdivision, “unusual circumstances” does not include the fact that the defendant has made all prior court appearances or has not committed any new offenses.

(d) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 17. Section 1275 is added to the Penal Code, to read:

1275. (a) (1) In making a pretrial release or detention decision pursuant to Section 1275a or 1275b, a judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, the probability of his or her appearing at trial or at a hearing of the case, and the presumption of innocence. The public safety, the safety of the victim, and the probability of the accused appearing in court as required shall be the primary considerations.

(2) In considering the seriousness of the offense charged, a judge or magistrate shall include consideration of the alleged injury to the victim, alleged threats to the victim or a witness to the crime charged, and the alleged use of a firearm or other deadly weapon in the commission of the crime charged.

(3) It shall be the duty of the court to determine what condition or conditions will ensure the safety of the community, secure the defendant’s appearance at trial or at a hearing of the case, and facilitate pretrial release. If, pursuant to Section 1275b, the court finds that no conditions will reasonably ensure the defendant’s appearance in court or at a hearing of the court and protect public

1 safety, the court shall issue an order with findings of fact and a  
2 statement explaining what condition or conditions it considered  
3 and why those conditions were inadequate.

4 (b) The judge or magistrate shall make a pretrial release or  
5 detention decision for a person without unnecessary delay, and in  
6 any event, within the time period prescribed in Section 825.

7 (c) In making a pretrial release decision pursuant to Section  
8 1275a, the judge or magistrate shall consider the pretrial services  
9 agency's risk assessment, recommendations on conditions of  
10 release, and the pretrial services report in accordance with Section  
11 1318.3. If a judge or magistrate's release decision is not consistent  
12 with the pretrial services program's risk assessment and  
13 recommendations on conditions of release, the judge or magistrate  
14 shall include in its order for release a statement of the reasons.

15 (d) In making a pretrial detention decision following a detention  
16 hearing pursuant to Section 1275b, a judge or magistrate shall not  
17 consider the pretrial services agency's risk assessment or the results  
18 of the risk assessment and shall instead determine whether the  
19 person meets the description of subdivision (a) of Section 1275b,  
20 pursuant to Section 12 of Article 1 of the California Constitution.

21 (e) If a person is arrested for a serious felony, the prosecutor  
22 shall provide notice of the hearing required by Section 1275a or  
23 1275b to the alleged victim or next of kin of the alleged victim of  
24 the offense for which the person was arrested, pursuant to  
25 paragraph (3) of subdivision (f) of Section 28 of Article I of the  
26 California Constitution.

27 (f) This section shall become operative on January 1, 2020.

28 SEC. 18. Section 1275a is added to the Penal Code, to read:

29 1275a. (a) Except as provided in subdivision (f) and Section  
30 1275b, at the arraignment of a person who is in custody, the judge  
31 or magistrate shall, after considering the pretrial services report  
32 with recommendations for conditions of release and any relevant  
33 information provided by the prosecuting attorney or the defendant,  
34 order the pretrial release of the person subject to a release  
35 agreement under Section 1318 without further conditions, unless  
36 the judge or magistrate determines that the release will not  
37 reasonably ensure the appearance of the person as required, the  
38 safety of the victim, or public safety. If the judge or magistrate  
39 releases the person subject to a release agreement under Section

1 1318 without further conditions, the reasons for that decision shall  
2 be stated in the record and included in the court's minutes.

3 (b) (1) If, after considering the pretrial services report with  
4 recommendations for conditions of release and any relevant  
5 information provided by the prosecuting attorney or the defendant,  
6 the judge or magistrate determines that the release described in  
7 subdivision (a) will not reasonably ensure the appearance of the  
8 person as required, the safety of the victim, or public safety, the  
9 judge or magistrate shall order pretrial release subject to a release  
10 agreement under Section 1318 and to the least restrictive further  
11 nonmonetary condition or conditions that the judge or magistrate  
12 determines will reasonably ensure the appearance of the person as  
13 required, the safety of the victim, and public safety. The judge or  
14 magistrate shall include in its release order findings of fact and a  
15 statement of the reasons for the determination that the release  
16 described in subdivision (a) is not appropriate and the reasons for  
17 imposing each condition that are specific to the person before the  
18 court.

19 (2) The judge or magistrate shall not be required to specify the  
20 reasons for ordering that the defendant be provided either of the  
21 following services upon release:

22 (A) A reminder notification to come to court.

23 (B) Assistance with transportation to and from court.

24 (3) (A) If a person for whom any nonmonetary condition or  
25 combination of conditions is imposed has the financial ability to  
26 pay all or part of the costs associated with that condition or  
27 conditions, the court may order the defendant to pay a reasonable  
28 fee, which shall not exceed the actual cost of the condition or  
29 conditions. Inability to pay all or a portion of the costs shall not  
30 serve as grounds to impose more restrictive conditions.

31 (B) In cases of fraud or embezzlement prohibited in Section  
32 186.11, the prosecutor may seek the remedies provided in that  
33 section to preserve property or assets in the control of the defendant  
34 or transferred by that person to a third party subsequent to the  
35 alleged commission of the crime.

36 (c) (1) If, after considering the pretrial services report with  
37 recommendations for conditions of release and any relevant  
38 information provided by the prosecuting attorney or the defendant,  
39 the judge or magistrate determines that the release described in  
40 subdivision (b) will not reasonably ensure the appearance of the

1 person as required, the judge or magistrate shall set monetary bail  
2 as determined pursuant to paragraph (2). The court may also order  
3 monetary bail in combination with the least restrictive nonmonetary  
4 condition or combination of nonmonetary conditions that the judge  
5 or magistrate determines will reasonably ensure the appearance  
6 of the person as required, the safety of the victim, and public safety.

7 (2) (A) Monetary bail shall be set at the least restrictive level  
8 necessary to ensure the appearance of the defendant in court as  
9 required. In setting monetary bail, the court shall conduct an inquiry  
10 into the person's ability to pay.

11 (B) For purposes of this paragraph, "ability to pay" means the  
12 defendant's ability as defined in paragraph (2) of subdivision (g)  
13 of Section 987.8 or as defined by the California Rules of Court  
14 developed by the Judicial Council for this purpose.

15 (3) A judge or magistrate shall not set monetary bail in an  
16 amount that results in the pretrial detention of a defendant solely  
17 because of his or her inability to pay.

18 (d) If the defendant has not retained counsel, the court shall  
19 offer to appoint counsel to represent him or her at his or her  
20 arraignment. If the defendant requests that counsel be appointed,  
21 or if the court finds that the defendant is not competent to represent  
22 himself or herself, the court shall appoint counsel.

23 (e) The fact that the court has not received the report at the time  
24 of release consideration shall not preclude that release.

25 (f) (1) For a defendant charged with a violent felony, as defined  
26 in subdivision (c) of Section 667.5, the pretrial services agency  
27 shall conduct a pretrial risk assessment and prepare a pretrial  
28 services report only if the defendant, either directly or through  
29 counsel if the person is represented by counsel, requests a pretrial  
30 risk assessment and report.

31 (2) If the defendant requests a pretrial risk assessment, the  
32 assessment and report shall be completed within 12 hours, and  
33 within 24 hours the defendant shall be considered for release  
34 pursuant to subdivisions (a), (b), and (c).

35 (g) A defendant for whom conditions of release are imposed  
36 and who, five days after the imposition of the conditions, continues  
37 to be detained as a result of an inability to meet the conditions of  
38 release, shall be entitled to an automatic review of the conditions  
39 by the court. The defendant may waive this review.

1 (h) For purposes of this section, “least restrictive” means those  
2 release terms necessary to reasonably ensure the appearance of  
3 the specific person, the safety of the victim, and public safety, as  
4 determined by the court.

5 (i) This section shall become operative on January 1, 2020.

6 SEC. 19. Section 1275b is added to the Penal Code, to read:

7 1275b. (a) A prosecuting attorney may file a motion with the  
8 court at any time, including any time before or after a defendant’s  
9 release pursuant to Section 1269b, seeking the pretrial detention  
10 of the defendant in any of the following circumstances:

11 (1) The defendant is charged with a capital crime and the  
12 prosecuting attorney alleges that the facts are evident or the  
13 presumption great.

14 (2) The defendant is charged with a felony offense involving  
15 acts of violence on another person, or a felony sexual assault  
16 offense on another person and the prosecuting attorney alleges all  
17 of the following:

18 (A) The facts are evident or the presumption great.

19 (B) There is no condition or combination of conditions of pretrial  
20 release that would reasonably ensure the physical safety of another  
21 person or persons.

22 (C) There is a substantial likelihood the defendant’s release  
23 would result in great bodily harm to others.

24 (3) The defendant is charged with a felony offense and the  
25 prosecuting attorney alleges all of the following:

26 (A) The facts are evident or the presumption great.

27 (B) The defendant has threatened another with great bodily  
28 harm.

29 (C) There is no condition or combination of conditions of pretrial  
30 release that would reasonably ensure the safety of the person who  
31 has been threatened.

32 (D) There is a substantial likelihood that the defendant would  
33 carry out the threat if released.

34 (b) (1) If a motion for pretrial detention is filed pursuant to  
35 subdivision (a), a hearing shall be held before a magistrate or judge  
36 to determine whether to release the defendant pending trial unless  
37 the hearing is waived by the defendant, either directly or, if he or  
38 she is represented by counsel, through counsel. The defense  
39 attorney shall be given notice and a reasonable opportunity to be  
40 heard on the matter. If the defendant does not have counsel, the

1 court shall appoint counsel. The hearing shall be held within 48  
2 hours after filing the motion unless waived by the defendant either  
3 directly or, if represented by counsel, through counsel.

4 (2) If the defendant waives a hearing under this section and a  
5 pretrial risk assessment was conducted and a pretrial services report  
6 was prepared, they shall not be provided to the parties named in  
7 paragraph (2) of subdivision (f) and the defendant shall be ordered  
8 detained.

9 (c) The defendant shall be afforded an opportunity to present  
10 witnesses, to cross-examine witnesses who appear at the hearing,  
11 and to present relevant evidence.

12 (d) In determining whether the facts are evident or the  
13 presumption great as specified in paragraph (1), (2), or (3) of  
14 subdivision (a), the finding of an indictment or a holding order  
15 shall not add to the strength of the proof or create a presumption  
16 that the facts are evident or the presumption great.

17 (e) In making the determination whether there is a substantial  
18 likelihood that the defendant's release would result in great bodily  
19 harm to others, as specified in subparagraph (C) of paragraph (2)  
20 of subdivision (a), or whether there is a substantial likelihood that  
21 the defendant would carry out the threat of great bodily harm if  
22 released, as specified in subparagraph (D) of paragraph (3) of  
23 subdivision (a), the court shall consider all of the following:

24 (1) If any condition or combination of conditions of pretrial  
25 release would reasonably ensure the physical safety of another  
26 person or persons from great bodily harm.

27 (2) The nature and seriousness of the physical harm to any  
28 person or persons that might be posed by the defendant's release.

29 (3) Any relevant history or facts about the defendant that directly  
30 correspond to whether his or her release is likely to result in great  
31 bodily harm to others, as specified in subparagraph (C) of  
32 paragraph (2) of subdivision (a), or to the threatened person, as  
33 specified in subparagraph (D) of paragraph (3) of subdivision (a).

34 (f) In addition to the above factors, the court shall consider all  
35 of the following:

36 (1) The protection of the public.

37 (2) The safety of the victim.

38 (3) The nature and circumstances of the offense charged.

39 (4) The weight of the evidence against the defendant.

40 (5) The previous criminal record of the defendant.

1 (6) The probability of the defendant appearing at the trial or  
2 hearing of the case.

3 (7) The presumption of innocence and the presumption of release  
4 pending trial.

5 (g) If, after considering any relevant evidence provided by the  
6 prosecuting attorney or the defendant, and if no condition or  
7 combination of conditions would reasonably ensure the safety of  
8 another person or persons from great bodily harm, the court shall  
9 order the person detained pending trial only if, pursuant to Section  
10 12 of Article 1 of the Constitution, the court finds that the  
11 defendant meets one of the following descriptions:

12 (1) The defendant has been charged with a capital crime and  
13 the facts are evident or the presumption great.

14 (2) The defendant has been charged with a felony offense  
15 involving an act of violence on another person, or a felony sexual  
16 assault offense on another person, the facts are evident or the  
17 presumption great, and the court finds based upon clear and  
18 convincing evidence that there is a substantial likelihood the  
19 person's release would result in great bodily harm to another person  
20 or persons.

21 (3) The defendant has been charged with a felony offense, the  
22 facts are evident or the presumption great, and the court finds based  
23 on clear and convincing evidence that the person has threatened  
24 another with great bodily harm in the charged case and that there  
25 is a substantial likelihood that the person would carry out the threat  
26 if released.

27 (h) In a detention order issued under subdivision (g), the court  
28 shall include findings of fact and a statement of the reasons for the  
29 detention, including the specific likelihood of great bodily harm,  
30 if applicable, and why no condition or conditions could reasonably  
31 mitigate that likelihood.

32 (i) If the court does not order the pretrial detention of the person  
33 at the conclusion of the hearing under this section, pretrial services  
34 shall conduct a risk assessment and prepare a pretrial services  
35 report with recommendations for conditions of release and the  
36 court shall order the release of the person, with or without  
37 conditions, pursuant to Section 1275a.

38 (j) This section shall become operative on January 1, 2020.

39 SEC. 20. Section 1275.1 of the Penal Code is amended to read:

1 1275.1. (a) Bail, pursuant to this chapter, shall not be accepted  
2 unless a judge or magistrate finds that no portion of the  
3 consideration, pledge, security, deposit, or indemnification paid,  
4 given, made, or promised for its execution was feloniously  
5 obtained.

6 (b) A hold on the release of a defendant from custody shall only  
7 be ordered by a magistrate or judge if any of the following occurs:

8 (1) A peace officer, as defined in Section 830, files a declaration  
9 executed under penalty of perjury setting forth probable cause to  
10 believe that the source of any consideration, pledge, security,  
11 deposit, or indemnification paid, given, made, or promised for its  
12 execution was feloniously obtained.

13 (2) A prosecutor files a declaration executed under penalty of  
14 perjury setting forth probable cause to believe that the source of  
15 any consideration, pledge, security, deposit, or indemnification  
16 paid, given, made, or promised for its execution was feloniously  
17 obtained. A prosecutor shall have absolute civil immunity for  
18 executing a declaration pursuant to this paragraph.

19 (3) The magistrate or judge has probable cause to believe that  
20 the source of any consideration, pledge, security, deposit, or  
21 indemnification paid, given, made, or promised for its execution  
22 was feloniously obtained.

23 (c) Once a magistrate or judge has determined that probable  
24 cause exists, as provided in subdivision (b), a defendant bears the  
25 burden by a preponderance of the evidence to show that no part  
26 of any consideration, pledge, security, deposit, or indemnification  
27 paid, given, made, or promised for its execution was obtained by  
28 felonious means. Once a defendant has met such burden, the  
29 magistrate or judge shall release the hold previously ordered and  
30 the defendant shall be released under the authorized amount of  
31 bail.

32 (d) The defendant and his or her attorney shall be provided with  
33 a copy of the declaration of probable cause filed under subdivision  
34 (b) no later than the date set forth in Section 825.

35 (e) Nothing in this section shall prohibit a defendant from  
36 obtaining a loan of money so long as the loan will be funded and  
37 repaid with funds not feloniously obtained.

38 (f) At the request of any person providing any portion of the  
39 consideration, pledge, security, deposit, or indemnification paid,  
40 given, made, or promised for its execution, the magistrate or judge,



1 at an evidentiary hearing to determine the source of the funds, may  
2 close it to the general public to protect the person's right to privacy  
3 in his or her financial affairs.

4 (g) If the declaration, having been filed with a magistrate or  
5 judge, is not acted on within 24 hours, the defendant shall be  
6 released from custody upon posting of the amount of bail set.

7 (h) Nothing in this code shall deny the right of the defendant,  
8 either personally or through his or her attorney, bail agent licensed  
9 by the Department of Insurance, admitted surety insurer licensed  
10 by the Department of Insurance, friend, or member of his or her  
11 family from making an application to the magistrate or judge for  
12 the release of the defendant on bail.

13 (i) The bail of any defendant found to have willfully misled the  
14 court regarding the source of bail may be increased as a result of  
15 the willful misrepresentation. The misrepresentation may be a  
16 factor considered in any subsequent bail hearing.

17 (j) If a defendant has met the burden under subdivision (c), and  
18 a defendant will be released from custody upon the issuance of a  
19 bail bond issued pursuant to authority of Section 1269 or 1269b  
20 by any admitted surety insurer or any bail agent, approved by the  
21 Insurance Commissioner, the magistrate or judge shall vacate the  
22 holding order imposed under subdivision (b) upon the condition  
23 that the consideration for the bail bond is approved by the court.

24 (k) As used in this section, "feloniously obtained" means any  
25 consideration, pledge, security, deposit, or indemnification paid,  
26 given, made, or promised for its execution which is possessed,  
27 received, or obtained through an unlawful act, transaction, or  
28 occurrence constituting a felony.

29 (l) This section shall remain in effect only until January 1, 2020,  
30 and as of that date is repealed.

31 SEC. 21. Section 1275.1 is added to the Penal Code, to read:

32 1275.1. (a) Monetary bail, pursuant to this chapter, shall not  
33 be accepted unless a judge or magistrate finds that no portion of  
34 the consideration, pledge, security, deposit, or indemnification  
35 paid, given, made, or promised for its execution was feloniously  
36 obtained.

37 (b) A hold on the release of a defendant from custody shall only  
38 be ordered by a magistrate or judge if any of the following occurs:

39 (1) A peace officer, as defined in Section 830, files a declaration  
40 executed under penalty of perjury setting forth probable cause to

1 believe that the source of any consideration, pledge, security,  
2 deposit, or indemnification paid, given, made, or promised for its  
3 execution was feloniously obtained.

4 (2) A prosecutor files a declaration executed under penalty of  
5 perjury setting forth probable cause to believe that the source of  
6 any consideration, pledge, security, deposit, or indemnification  
7 paid, given, made, or promised for its execution was feloniously  
8 obtained. A prosecutor shall have absolute civil immunity for  
9 executing a declaration pursuant to this paragraph.

10 (3) The magistrate or judge has probable cause to believe that  
11 the source of any consideration, pledge, security, deposit, or  
12 indemnification paid, given, made, or promised for its execution  
13 was feloniously obtained.

14 (c) Once a magistrate or judge has determined that probable  
15 cause exists, as provided in subdivision (b), a defendant bears the  
16 burden by a preponderance of the evidence to show that no part  
17 of any consideration, pledge, security, deposit, or indemnification  
18 paid, given, made, or promised for its execution was obtained by  
19 felonious means. Once a defendant has met such burden, the  
20 magistrate or judge shall release the hold previously ordered and  
21 the defendant shall be released under the authorized amount of  
22 bail.

23 (d) The defendant and his or her attorney shall be provided with  
24 a copy of the declaration of probable cause filed under subdivision  
25 (b) no later than the date set forth in Section 825.

26 (e) Nothing in this section shall prohibit a defendant from  
27 obtaining a loan of money so long as the loan will be funded and  
28 repaid with funds not feloniously obtained.

29 (f) At the request of any person providing any portion of the  
30 consideration, pledge, security, deposit, or indemnification paid,  
31 given, made, or promised for its execution, the magistrate or judge,  
32 at an evidentiary hearing to determine the source of the funds, may  
33 close it to the general public to protect the person's right to privacy  
34 in his or her financial affairs.

35 (g) If the declaration, having been filed with a magistrate or  
36 judge, is not acted on within 24 hours, the defendant shall be  
37 released from custody upon posting of the amount of bail set.

38 (h) Nothing in this code shall deny the right of the defendant,  
39 either personally or through his or her attorney, bail agent licensed  
40 by the Department of Insurance, admitted surety insurer licensed

1 by the Department of Insurance, friend, or member of his or her  
2 family from making an application to the magistrate or judge for  
3 the release of the defendant on monetary bail.

4 (i) The bail of any defendant found to have willfully misled the  
5 court regarding the source of bail may be increased as a result of  
6 the willful misrepresentation, so long as the amount conforms with  
7 subdivision (c) of Section 1275a. The misrepresentation may be  
8 a factor considered in any subsequent bail hearing.

9 (j) If a defendant has met the burden under subdivision (c), and  
10 a defendant will be released from custody upon the issuance of a  
11 bail bond issued pursuant to authority of Section 1269 by any  
12 admitted surety insurer or any bail agent, approved by the Insurance  
13 Commissioner, the magistrate or judge shall vacate the holding  
14 order imposed under subdivision (b) upon the condition that the  
15 consideration for the bail bond is approved by the court.

16 (k) As used in this section, “feloniously obtained” means any  
17 consideration, pledge, security, deposit, or indemnification paid,  
18 given, made, or promised for its execution which is possessed,  
19 received, or obtained through an unlawful act, transaction, or  
20 occurrence constituting a felony.

21 (l) This section shall become operative on January 1, 2020.

22 SEC. 22. Section 1277 of the Penal Code is amended to read:

23 1277. (a) When the defendant has been held to answer upon  
24 an examination for a public offense, the admission to bail may be  
25 by the magistrate by whom he or she is so held, or by any  
26 magistrate who has power to issue the writ of habeas corpus.

27 (b) This section shall remain in effect only until January 1, 2020,  
28 and as of that date is repealed.

29 SEC. 23. Section 1277 is added to the Penal Code, to read:

30 1277. (a) When the defendant has been held to answer upon  
31 an examination for a public offense, pretrial release pursuant to  
32 Section 1275a or admission to bail may be by the magistrate by  
33 whom he or she is so held, or by any magistrate who has power  
34 to issue the writ of habeas corpus.

35 (b) This section shall become operative on January 1, 2020.

36 SEC. 24. Section 1278 of the Penal Code is amended to read:

37 1278. (a) Bail is put in by a written undertaking, executed by  
38 two sufficient sureties (with or without the defendant, in the  
39 discretion of the magistrate), and acknowledged before the court  
40 or magistrate, in substantially the following form:

1 An order having been made on the \_\_\_\_ day of \_\_\_\_, 20\_\_, by  
2 \_\_\_\_, a judge of the \_\_\_\_ Court of \_\_\_\_ County, that \_\_\_\_ be held  
3 to answer upon a charge of (stating briefly the nature of the  
4 offense), upon which he or she has been admitted to bail in the  
5 sum of \_\_\_\_ dollars (\$\_\_\_\_); we, \_\_\_\_ and \_\_\_\_, of \_\_\_\_ (stating  
6 their place of residence and occupation), hereby undertake that the  
7 above-named \_\_\_\_ will appear and answer any charge in any  
8 accusatory pleading based upon the acts supporting the charge  
9 above mentioned, in whatever court it may be prosecuted, and will  
10 at all times hold himself or herself amenable to the orders and  
11 process of the court, and if convicted, will appear for  
12 pronouncement of judgment or grant of probation, or if he or she  
13 fails to perform either of these conditions, that we will pay to the  
14 people of the State of California the sum of \_\_\_\_ dollars (\$\_\_\_\_)  
15 (inserting the sum in which the defendant is admitted to bail). If  
16 the forfeiture of this bond be ordered by the court, judgment may  
17 be summarily made and entered forthwith against the said (naming  
18 the sureties), and the defendant if he or she be a party to the bond,  
19 for the amount of their respective undertakings herein, as provided  
20 by Sections 1305 and 1306.

21 (b) Every undertaking of bail shall contain the bail agent license  
22 number of the owner of the bail agency issuing the undertaking  
23 along with the name, address, and phone number of the agency,  
24 regardless of whether the owner is an individual, partnership, or  
25 corporation. The bail agency name on the undertaking shall be a  
26 business name approved by the Insurance Commissioner for use  
27 by the bail agency owner, and be so reflected in the public records  
28 of the commissioner. The license number of the bail agent  
29 appearing on the undertaking shall be in the same type size as the  
30 name, address, and phone number of the agency.

31 (c) This section shall remain in effect only until January 1, 2020,  
32 and as of that date is repealed.

33 SEC. 25. Section 1278 is added to the Penal Code, to read:

34 1278. (a) (1) Upon a finding that monetary bail should be set  
35 pursuant to subdivision (c) of Section 1275a, the defendant may  
36 execute an unsecured appearance bond or a secured bond in the  
37 amount specified by the court. The court may require, and the  
38 defendant may request, that an unsecured appearance bond be  
39 signed by uncompensated third parties.

1 (2) For the purposes of this subdivision, “unsecured appearance  
2 bond” means an order to release a person upon his or her promise  
3 to appear in court and his or her unsecured promise to pay an  
4 amount of money, specified by the court, if he or she fails to appear  
5 as promised.

6 (b) A secured bond is put in by a written undertaking, executed  
7 by two sufficient sureties (with or without the defendant, in the  
8 discretion of the magistrate), and acknowledged before the court  
9 or magistrate, in substantially the following form:

10 An order having been made on the \_\_\_\_ day of \_\_\_\_, 20\_\_, by  
11 \_\_\_\_, a judge of the \_\_\_\_ Court of \_\_\_\_ County, that \_\_\_\_ be held  
12 to answer upon a charge of (stating briefly the nature of the  
13 offense), upon which he or she has been admitted to bail in the  
14 sum of \_\_\_\_ dollars (\$\_\_\_\_); we, \_\_\_\_ and \_\_\_\_, of \_\_\_\_ (stating  
15 their place of residence and occupation), hereby undertake that the  
16 above-named \_\_\_\_ will appear and answer any charge in any  
17 accusatory pleading based upon the acts supporting the charge  
18 above mentioned, in whatever court it may be prosecuted, and will  
19 at all times hold himself or herself amenable to the orders and  
20 process of the court, and if convicted, will appear for  
21 pronouncement of judgment or grant of probation, or if he or she  
22 fails to perform either of these conditions, that we will pay to the  
23 people of the State of California the sum of \_\_\_\_ dollars (\$\_\_\_\_)  
24 (inserting the sum in which the defendant is admitted to bail). If  
25 the forfeiture of this bond be ordered by the court, judgment may  
26 be summarily made and entered forthwith against the said (naming  
27 the sureties), and the defendant if he or she be a party to the bond,  
28 for the amount of their respective undertakings herein, as provided  
29 by Sections 1305 and 1306.

30 (c) Every undertaking of bail shall contain the bail agent license  
31 number of the owner of the bail agency issuing the undertaking  
32 along with the name, address, and phone number of the agency,  
33 regardless of whether the owner is an individual, partnership, or  
34 corporation. The bail agency name on the undertaking shall be a  
35 business name approved by the Insurance Commissioner for use  
36 by the bail agency owner, and be so reflected in the public records  
37 of the commissioner. The license number of the bail agent  
38 appearing on the undertaking shall be in the same type size as the  
39 name, address, and phone number of the agency.

40 (d) This section shall become operative on January 1, 2020.

1 SEC. 26. Section 1284 of the Penal Code is amended to read:

2 1284. (a) When the offense charged is not punishable with  
3 death, the officer serving the bench warrant must, if required, take  
4 the defendant before a magistrate in the county in which it is issued,  
5 or in which he or she is arrested, for the purpose of giving bail. If  
6 the defendant appears before the magistrate without the bench  
7 warrant having been served upon him or her, the magistrate shall  
8 deliver him or her into the custody of the sheriff for the purpose  
9 of immediate booking and the recording of identification data,  
10 whereupon the sheriff shall deliver the defendant back before the  
11 magistrate for the purpose of giving bail.

12 (b) This section shall remain in effect only until January 1, 2020,  
13 and as of that date is repealed.

14 SEC. 27. Section 1284 is added to the Penal Code, to read:

15 1284. (a) When the offense charged is not punishable with  
16 death, the officer serving the bench warrant must, if required, take  
17 the defendant before a magistrate in the county in which it is issued,  
18 or in which he or she is arrested, for the purpose of a pretrial release  
19 hearing. If the defendant appears before such magistrate without  
20 the bench warrant having been served upon him or her, the  
21 magistrate shall deliver him or her into the custody of the sheriff  
22 for the purpose of immediate booking and the recording of  
23 identification data, whereupon the sheriff shall deliver the  
24 defendant back before the magistrate for the purpose of a pretrial  
25 release hearing.

26 (b) This section shall become operative on January 1, 2020.

27 SEC. 28. Section 1288 of the Penal Code is amended to read:

28 1288. (a) The provisions contained in Sections 1279, 1280,  
29 1280a, and 1281, in relation to bail before indictment, apply to  
30 bail after indictment.

31 (b) This section shall remain in effect only until January 1, 2020,  
32 and as of that date is repealed.

33 SEC. 29. Section 1289 of the Penal Code is amended to read:

34 1289. (a) After a defendant has been admitted to bail upon an  
35 indictment or information, the court in which the charge is pending  
36 may, upon good cause shown, either increase or reduce the amount  
37 of bail. If the amount be increased, the court may order the  
38 defendant to be committed to actual custody, unless he or she give  
39 bail in such increased amount. If application be made by the

1 defendant for a reduction of the amount, notice of the application  
2 must be served upon the district attorney.

3 (b) This section shall remain in effect only until January 1, 2020,  
4 and as of that date is repealed.

5 SEC. 30. Section 1289 is added to the Penal Code, to read:

6 1289. (a) After a defendant has been released from custody  
7 upon an indictment or information pursuant to Section 1275a, the  
8 court in which the charge is pending may, upon a change in  
9 circumstances, amend the release order to change the conditions  
10 of release, including the amount of any monetary bail. If, upon  
11 motion of the prosecuting attorney, the amount of monetary bail  
12 is increased, the court shall set bail in accordance with subdivision  
13 (c) of Section 1275a. If the defendant requests a change in the  
14 conditions of release, notice of the request shall be served upon  
15 the prosecuting attorney.

16 (b) If the defendant has not retained counsel, the court shall  
17 offer to appoint counsel for purposes of this section. If the  
18 defendant requests that counsel be appointed, or if the court finds  
19 that the defendant is not competent to represent himself or herself,  
20 the court shall appoint counsel.

21 (c)

22 This section shall become operative on January 1, 2020.

23 SEC. 31. Section 1295 of the Penal Code is amended to read:

24 1295. (a) The defendant, or any other person, at any time after  
25 an order admitting the defendant to bail or after the arrest and  
26 booking of a defendant for having committed a misdemeanor,  
27 instead of giving bail may deposit, with the clerk of the court in  
28 which the defendant is held to answer or notified to appear for  
29 arraignment, the sum mentioned in the order or, if no order, in the  
30 schedule of bail previously fixed by the judges of the court, and,  
31 upon delivering to the officer in whose custody defendant is a  
32 certificate of the deposit, the defendant shall be discharged from  
33 custody.

34 (b) Where more than one deposit is made with respect to any  
35 charge in any accusatory pleading based upon the acts supporting  
36 the original charge as a result of which an earlier deposit was made,  
37 the defendant shall receive credit in the amount of any earlier  
38 deposit.

39 (c) The clerk of the court shall not accept a general assistance  
40 check for this deposit or any part thereof.

(d) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 32. Section 1295 is added to the Penal Code, to read:

1295. (a) The defendant, at any time after an order admitting the defendant to bail pursuant to Section 1275a, instead of giving bail may deposit, with the clerk of the court in which the defendant is held to answer or notified to appear for arraignment, the sum mentioned in the order or a percentage of the sum mentioned in the order, not to exceed 10 percent, and, upon delivering to the officer in whose custody defendant is a certificate of the deposit, the defendant shall be discharged from custody.

(b) Where more than one deposit is made with respect to any charge in any accusatory pleading based upon the acts supporting the original charge as a result of which an earlier deposit was made, the defendant shall receive credit in the amount of any earlier deposit.

(c) The clerk of the court shall not accept a general assistance check for this deposit or any part thereof.

(d) This section shall become operative on January 1, 2020.

SEC. 33. Section 1318 of the Penal Code is amended to read:

1318. (a) The defendant shall not be released from custody under an own recognizance until the defendant files with the clerk of the court or other person authorized to accept bail a signed release agreement which includes:

(1) The defendant's promise to appear at all times and places, as ordered by the court or magistrate and as ordered by any court in which, or any magistrate before whom the charge is subsequently pending.

(2) The defendant's promise to obey all reasonable conditions imposed by the court or magistrate.

(3) The defendant's promise not to depart this state without leave of the court.

(4) Agreement by the defendant to waive extradition if the defendant fails to appear as required and is apprehended outside of the State of California.

(5) The acknowledgment of the defendant that he or she has been informed of the consequences and penalties applicable to violation of the conditions of release.

(b) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.



1 SEC. 34. Section 1318 is added to the Penal Code, to read:

2 1318. (a) The defendant shall not be released from custody  
3 under his or her own recognizance with no further conditions, or  
4 released with a further condition or conditions, until the defendant  
5 files with the clerk of the court or other person authorized to accept  
6 bail a signed release agreement which includes:

7 (1) The defendant's promise to appear at all times and places,  
8 as ordered by the court or magistrate and as ordered by any court  
9 in which, or any magistrate before whom the charge is subsequently  
10 pending.

11 (2) The defendant's promise to obey all reasonable conditions  
12 imposed by the court or magistrate.

13 (3) The defendant's promise not to depart this state without  
14 leave of the court.

15 (4) Agreement by the defendant to waive extradition if the  
16 defendant fails to appear as required and is apprehended outside  
17 of the State of California.

18 (5) The acknowledgment of the defendant that he or she has  
19 been informed of the consequences and penalties applicable to  
20 violation of the conditions of release.

21 (b) This section shall become operative on January 1, 2020.

22 SEC. 35. Section 1318.1 of the Penal Code is amended to read:

23 1318.1. (a) A court, with the concurrence of the board of  
24 supervisors, may employ an investigative staff for the purpose of  
25 recommending whether a defendant should be released on his or  
26 her own recognizance.

27 (b) Whenever a court has employed an investigative staff  
28 pursuant to subdivision (a), an investigative report shall be prepared  
29 in all cases involving a violent felony, as described in subdivision  
30 (c) of Section 667.5, or a felony in violation of subdivision (a) of  
31 Section 23153 of the Vehicle Code, recommending whether the  
32 defendant should be released on his or her own recognizance. The  
33 report shall include all of the following:

34 (1) Written verification of any outstanding warrants against the  
35 defendant.

36 (2) Written verification of any prior incidents where the  
37 defendant has failed to make a court appearance.

38 (3) Written verification of the criminal record of the defendant.

39 (4) Written verification of the residence of the defendant during  
40 the past year.

1 After the report is certified pursuant to this subdivision, it shall  
2 be submitted to the court for review, prior to a hearing held  
3 pursuant to Section 1319.

4 (c) The salaries of the staff are a proper charge against the  
5 county.

6 (d) This section shall remain in effect only until January 1, 2020,  
7 and as of that date is repealed.

8 SEC. 36. Section 1318.1 is added to the Penal Code, to read:

9 1318.1. (a) Each county shall establish a pretrial services  
10 agency, which shall be responsible for gathering information about  
11 newly arrested defendants, conducting risk assessments on pretrial  
12 defendants, preparing individually tailored recommendations to  
13 the court regarding release options and conditions, and providing  
14 pretrial services and supervision to defendants on pretrial release.  
15 Pretrial services agencies shall do all of the following:

16 (1) Use methods that research has proven to be effective in  
17 reducing unnecessary detention while ensuring court appearance  
18 and the safety of the community during the pretrial stage.

19 (2) Assist defendants on pretrial release in remaining free from  
20 custody and to employ the least restrictive interventions and  
21 practices.

22 (3) Ensure that services provided are culturally and linguistically  
23 competent.

24 (4) Ensure that all policies and practices are developed and  
25 applied to reduce or eliminate bias based on race, ethnicity, national  
26 origin, immigration status, gender, religion, and sexual orientation.

27 (b) Each county shall develop a pretrial services agency. The  
28 agency shall follow the standards and guidelines set by ~~\_\_\_\_\_~~ *the*  
29 *Judicial Council* pursuant to Sections 1318.2 and 1318.3, as well  
30 as current best practices and standards for pretrial services agencies  
31 and professionals.

32 (c) Pretrial services agencies shall make every effort to assist  
33 pretrial defendants with complying with their conditions of release  
34 and to address noncompliance with pretrial services requirements  
35 administratively.

36 (d) Pretrial services agencies shall, at a minimum, notify released  
37 defendants of their court dates.

38 (e) In carrying out its duties, pretrial services agencies may do  
39 any of the following:

1 (1) Through appropriate referral, and at the request of a  
2 defendant, assist a defendant released pretrial to access medical,  
3 legal, and social services that would increase the chances of  
4 successful compliance with conditions of pretrial release.

5 (2) Coordinate the services of community release projects, other  
6 agencies, nonprofit organizations, or individuals that serve as  
7 third-party custodians for released defendants.

8 (f) When ordered by the court, a pretrial service agency shall  
9 monitor the compliance of released defendants with ordered release  
10 conditions through appropriate supervision. In supervising pretrial  
11 defendants, pretrial services agencies shall utilize the least  
12 restrictive interventions and practices to promote compliance with  
13 court-ordered conditions.

14 (g) This section shall become operative on January 1, 2020.

15 SEC. 37. Section 1318.2 is added to the Penal Code, to read:

16 1318.2. (a) The \_\_\_\_\_ *Judicial Council* shall do all of the  
17 following:

18 ~~(1) (A) Develop guidelines as provided in Section 1318.3.~~

19 ~~(B) Promulgate and periodically revise guidelines related to~~  
20 ~~pretrial risk and needs assessment tools.~~

21 ~~(C) Promulgate and periodically revise guidelines related to the~~  
22 ~~imposition of pretrial release conditions that are consistent with~~  
23 ~~Sections 1275a and 1318.~~

24 ~~(2) Provide technical assistance to counties in improving their~~  
25 ~~pretrial release and detention policies and procedures and in~~  
26 ~~promoting compliance by counties with the requirements of state~~  
27 ~~law relating to pretrial release and detention.~~

28 ~~(3) (A) No later than \_\_\_\_\_, select a pretrial risk assessment~~  
29 ~~tool that meets the requirements of subdivision (b) of Section~~  
30 ~~1318.3 and make that tool available to counties.~~

31 ~~(B) Analyze new pretrial risk assessment tools as they become~~  
32 ~~available and make recommendations for the replacement of the~~  
33 ~~existing pretrial risk assessment tool.~~

34 ~~(4) No later than \_\_\_\_\_, the \_\_\_\_\_ shall develop a plan to~~  
35 ~~provide technical assistance to counties regarding the~~  
36 ~~implementation of the pretrial risk assessment selected pursuant~~  
37 ~~to paragraph (3).~~

38 ~~(5) Review data collected by the Board of State and Community~~  
39 ~~Corrections to monitor compliance with state law and guidelines~~  
40 ~~relating to pretrial release.~~

1 ~~(6) Investigate the existence of discrimination or inequities in~~  
2 ~~pretrial release.~~

3 ~~(b) In discharging its responsibilities under this section the~~  
4 ~~\_\_\_\_\_ may do any of the following:~~

5 ~~(1) Collect data related to pretrial release, pretrial detention,~~  
6 ~~and pretrial decisionmaking.~~

7 ~~(2) Survey pretrial services resources across state and local~~  
8 ~~governments.~~

9 ~~(3) Consult available research and data on the current~~  
10 ~~effectiveness of pretrial release conditions.~~

11 ~~(4) Enter partnerships or joint agreements with organizations~~  
12 ~~and agencies from this and other jurisdictions to perform needed~~  
13 ~~research and analysis.~~

14 ~~(5) Develop manuals, forms, and other controls to assist with~~  
15 ~~the administration of the guidelines developed pursuant to~~  
16 ~~paragraph (1) of subdivision (a).~~

17 ~~(6) Provide training and assistance on pretrial release to judges,~~  
18 ~~prosecutors, defense attorneys, pretrial services agencies, jail staff,~~  
19 ~~and law enforcement agencies.~~

20 *(1) Adopt a Rule of Court regarding the proper use of pretrial*  
21 *risk assessment information by judicial officer when making*  
22 *pretrial release and detention decisions. The rule shall address*  
23 *the necessity and frequency of validation of risk assessment tools*  
24 *on local populations.*

25 *(2) Adopt a Rule of Court regarding the imposition of pretrial*  
26 *release terms and conditions, including designation of risk levels*  
27 *or categories.*

28 *(3) Train judges on the use of pretrial risk assessment*  
29 *information when making pretrial release and detention decisions,*  
30 *and on the imposition of pretrial release terms and conditions.*

31 *(4) Compile and maintain in a list of validated pretrial risk*  
32 *assessment tools that are available in the public domain.*

33 *(b) Courts shall provide, at a minimum, the following data to*  
34 *the Judicial Council at least two times per year as directed by the*  
35 *Judicial Council:*

36 *(1) The number of individuals assessed using a pretrial risk*  
37 *assessment tool.*

38 *(2) The number of individuals released on their own*  
39 *recognizance without further conditions.*

1 (3) *The number of individuals released subject to further*  
2 *conditions.*

3 (4) *The number of individuals detained pretrial.*

4 (5) *The number of individuals released pretrial who fail to*  
5 *appear at a scheduled court appearance.*

6 (c) *When possible, the courts shall provide the following data*  
7 *to the Judicial Council:*

8 (1) *Demographic data of those released and detained, including*  
9 *race or ethnicity and gender.*

10 (2) *Other data necessary to evaluate the effectiveness of pretrial*  
11 *programs as identified by the Judicial Council.*

12 (d) (1) *The Judicial Council shall provide a biennial report to*  
13 *the Legislature that includes the information contained in*  
14 *paragraph (4) of subdivision (a) and subdivisions (b) and (c).*

15 (2) *A report to be submitted pursuant to this subdivision shall*  
16 *be submitted in compliance with Section 9795 of the Government*  
17 *Code.*

18 (e) *Each county's pretrial services agency, in coordination with*  
19 *the trial court and local law enforcement agencies shall provide*  
20 *data two times a year as directed by the Judicial Council regarding*  
21 *the following:*

22 (1) *The number of individuals on pretrial release who are*  
23 *charged with a new crime while on pretrial release.*

24 (2) *The number of individuals on pretrial release who are*  
25 *charged with a new violent crime while on pretrial release.*

26 (f) *The Judicial Council shall review data collected to inform*  
27 *its duties under this section in a manner that is consistent with*  
28 *state law and best practices related to pretrial release.*

29 ~~(e)~~

30 (g) *This section shall become operative on January 1, 2020.*

31 SEC. 38. Section 1318.3 is added to the Penal Code, to read:

32 1318.3. (a) For purposes of this section, the following terms  
33 have the following meanings:

34 (1) "Pretrial risk assessment tool" is the objective, standardized  
35 analysis of information about an arrested person that accurately  
36 measures the person's probability of appearing in court as required  
37 and the person's potential risk of criminal conduct while on pretrial  
38 release pending trial.

(2) “Pretrial services report” is a report containing the results of the pretrial risk assessment tool and the pretrial services agency’s recommendations on conditions of release.

(3) “Validated” means developed through peer-reviewed research and statistical analysis and proven to produce results that are accurate, based on the characteristics of the population being assessed, in predicting the likelihood that a person will fail to appear for trial or act as a threat to the safety of the community during the period of time between the initial arrest and the subsequent trial for the offense.

(b) ~~The~~ A pretrial risk assessment tool selected by \_\_\_\_\_ pursuant to ~~Section 1318.2~~ *used for pretrial decisionmaking under Sections 1269b, 1275, and 1275a* shall meet all of the following specifications:

(1) It shall be objective, standardized, and developed based on analysis of empirical data and risk factors relevant to the risk of failure to appear in court when required and risk to public safety.

(2) It shall be consistent with and guided by current research and evidence-based best practices.

(3) It shall be regularly validated according to current best practices and standards to ensure that it accurately predicts risk of failure to appear in court and risk to public safety.

(4) ~~It~~ *Consistent with paragraph (3),* it shall be regularly validated and adjusted, as appropriate, to ensure that the assessment ~~instrument~~ *tool* is equally accurate across all racial groups, ethnic groups, and genders. The validation study shall include testing for predictive bias, and disparate results by race, ethnicity, and gender. The tool shall be adjusted to ensure accuracy and to minimize disparate results.

(5) It shall not include race, ethnicity, national origin, immigration status, gender, religion, sexual orientation, education level, employment status, socioeconomic status, arrests that did not lead to conviction, or housing status as factors used in assessing risk or determining a risk score or level.

(6) ~~It~~ *Consistent with paragraph (3),* it shall give appropriate weight to factors, including criminal history, in a manner that ensures accuracy while minimizing racial and economic disparities.

(7) It shall not require an in-person interview of an arrested ~~person~~ *person, however, the pretrial services agency may, if*

1 *necessary and for administrative purposes only, ask the arrested*  
2 *person to identify a place of residence.*

3 ~~(8) It shall distinguish between failure to appear and willful~~  
4 ~~failure to appear.~~

5 ~~(e) If, prior to the effective date of the act that added this section,~~  
6 ~~a county is using a pretrial risk assessment tool, the county may~~  
7 ~~elect to continue using that pretrial risk assessment tool, provided~~  
8 ~~the tool meets the requirements of subdivision (b). For counties~~  
9 ~~that elect to continue use of an existing pretrial risk assessment~~  
10 ~~tool under this subdivision, the \_\_\_\_\_ shall review the tool to~~  
11 ~~determine whether it meets the requirements of subdivision (b).~~  
12 ~~The \_\_\_\_\_ shall also review the county's standards for the results~~  
13 ~~produced using the tool to determine whether it meets the~~  
14 ~~requirements contained in the policies developed pursuant to~~  
15 ~~subdivision (f). The county's pretrial risk assessment tool shall be~~  
16 ~~in compliance with the requirements in subdivisions (b) and (g)~~  
17 ~~by \_\_\_\_\_, as confirmed by the \_\_\_\_\_. If the county's pretrial risk~~  
18 ~~assessment tool is not in compliance by that date, the county shall~~  
19 ~~use the pretrial risk assessment tool selected by the \_\_\_\_\_ pursuant~~  
20 ~~to Section 1318.2.~~

21 *(c) Each county shall select a validated risk assessment tool*  
22 *that meets the requirements of subdivision (b). The agency*  
23 *responsible for pretrial assessment shall make an annual report*  
24 *to the Judicial Council of California, demonstrating that the tool*  
25 *meets the requirements of subdivision (b).*

26 ~~(d) Pursuant to Sections 1269b and 1275a, the pretrial services~~  
27 ~~agency shall conduct a pretrial risk assessment using the pretrial~~  
28 ~~risk assessment tool selected by \_\_\_\_\_ pursuant to Section 1318.2~~  
29 ~~or the pretrial risk assessment tool reviewed the county pursuant~~  
30 ~~to subdivision (c).~~

31 ~~(e) (1) The pretrial services agency shall prepare a pretrial~~  
32 ~~services report following the administration of the pretrial risk~~  
33 ~~assessment tool that contains the results of the pretrial risk~~  
34 ~~assessment tool, the offense charged, and a recommendation for~~  
35 ~~release under Section 1318 without further conditions or release~~  
36 ~~subject to the least restrictive further condition or conditions that~~  
37 ~~will reasonably ensure the arrested person's appearance in court~~  
38 ~~as required and public safety.~~

(2) The pretrial services agency shall provide copies of its report to the court, the prosecuting attorney, and to counsel for the arrested person or, if the person is not represented, to the defendant.

(3) The report shall not be used for any purpose other than that provided for in this section and Sections 1269b and 1275a.

~~(f) The \_\_\_\_\_ shall develop policies regarding, at a minimum, all of the following:~~

~~(1) Designation of risk levels or categories, if applicable.~~

~~(2) Guidelines for identification of pretrial release conditions based on risk assessment results.~~

~~(3) Validation of risk assessment tools.~~

~~(4) Guidelines for collection of data.~~

~~(g)~~

(f) Judges, magistrates, and commissioners who make pretrial release decisions shall be trained in the proper use of the information contained in a pretrial services report, including the results of the risk assessment.

~~(h)~~

(g) Pretrial services staff who administer pretrial risk assessment tools shall be trained in conducting the pretrial risk assessment tool and interpreting the results.

~~(i) The Board of State and Community Corrections, in consultation with the \_\_\_\_\_, shall develop a plan that establishes statewide requirements for counties relating to annual reporting of pretrial release and detention information. At a minimum, the plan shall require counties to submit the following data, disaggregated by race or ethnicity and gender, annually:~~

~~(1) The percentage of individuals released pretrial.~~

~~(2) The percentage of individuals released pretrial who fail to appear as required.~~

~~(3) The percentage of individuals released pretrial who commit new crimes while on pretrial release and the percentage of those released who commit new violent crimes while on pretrial release.~~

~~(4) The rate of judicial concurrence with recommended conditions of release.~~

(j) The \_\_\_\_\_ shall use the information reported by a county pursuant to subdivision (i) to monitor the effectiveness of the county's pretrial release policies, standards, and procedures and to ensure compliance with the requirements of state law. In monitoring effectiveness, the \_\_\_\_\_ shall compare the data



1 ~~specified in subdivision (i) with available data on pretrial release~~  
2 ~~prior to the effective date of the act that added this section. The~~  
3 ~~\_\_\_\_\_ may work with the Board of State and Community~~  
4 ~~Corrections to revise the reporting plan described in subdivision~~  
5 ~~(i) as necessary to improve monitoring of pretrial release in the~~  
6 ~~state.~~

7 ~~(k)~~

8 (h) Each county shall make publicly available its risk assessment  
9 tool guidelines, factors, weights, studies, data upon which  
10 validation studies rely, and information about how a risk  
11 assessment tool was renormed.

12 ~~(l)~~

13 (i) It is the intent of the Legislature in enacting this section to  
14 reduce racial, ethnic, and gender bias and disparate impact in  
15 pretrial release decisionmaking.

16 ~~(m)~~

17 (j) This section shall become operative on January 1, 2020.

18 SEC. 39. Section 1319 of the Penal Code is amended to read:

19 1319. (a) No person arrested for a violent felony, as described  
20 in subdivision (c) of Section 667.5, may be released on his or her  
21 own recognizance until a hearing is held in open court before the  
22 magistrate or judge, and until the prosecuting attorney is given  
23 notice and a reasonable opportunity to be heard on the matter. In  
24 all cases, these provisions shall be implemented in a manner  
25 consistent with the defendant's right to be taken before a magistrate  
26 or judge without unreasonable delay pursuant to Section 825.

27 (b) A defendant charged with a violent felony, as described in  
28 subdivision (c) of Section 667.5, shall not be released on his or  
29 her own recognizance where it appears, by clear and convincing  
30 evidence, that he or she previously has been charged with a felony  
31 offense and has willfully and without excuse from the court failed  
32 to appear in court as required while that charge was pending. In  
33 all other cases, in making the determination as to whether or not  
34 to grant release under this section, the court shall consider all of  
35 the following:

36 (1) The existence of any outstanding felony warrants on the  
37 defendant.

38 (2) Any other information presented in the report prepared  
39 pursuant to Section 1318.1. The fact that the court has not received  
40 the report required by Section 1318.1, at the time of the hearing

1 to decide whether to release the defendant on his or her own  
2 recognizance, shall not preclude that release.

3 (3) Any other information presented by the prosecuting attorney.

4 (c) The judge or magistrate who, pursuant to this section, grants  
5 or denies release on a person's own recognizance, within the time  
6 period prescribed in Section 825, shall state the reasons for that  
7 decision in the record. This statement shall be included in the  
8 court's minutes. The report prepared by the investigative staff  
9 pursuant to subdivision (b) of Section 1318.1 shall be placed in  
10 the court file for that particular matter.

11 (d) This section shall remain in effect only until January 1, 2020,  
12 and as of that date is repealed.

13 SEC. 40. Section 1319.5 of the Penal Code is amended to read:

14 1319.5. (a) No person described in subdivision (b) who is  
15 arrested for a new offense may be released on his or her own  
16 recognizance until a hearing is held in open court before the  
17 magistrate or judge.

18 (b) Subdivision (a) shall apply to the following:

19 (1) Any person who is currently on felony probation or felony  
20 parole.

21 (2) Any person who has failed to appear in court as ordered,  
22 resulting in a warrant being issued, three or more times over the  
23 three years preceding the current arrest, except for infractions  
24 arising from violations of the Vehicle Code, and who is arrested  
25 for any of the following offenses:

26 (A) Any felony offense.

27 (B) Any violation of the California Street Terrorism  
28 Enforcement and Prevention Act (Chapter 11 (commencing with  
29 Section 186.20) of Title 7 of Part 1).

30 (C) Any violation of Chapter 9 (commencing with Section 240)  
31 of Title 8 of Part 1 (assault and battery).

32 (D) A violation of Section 484 (theft).

33 (E) A violation of Section 459 (burglary).

34 (F) Any offense in which the defendant is alleged to have been  
35 armed with or to have personally used a firearm.

36 (c) This section shall remain in effect only until January 1, 2020,  
37 and as of that date is repealed.

38 SEC. 41. If the Commission on State Mandates determines  
39 that this act contains costs mandated by the state, reimbursement  
40 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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