



SB-10 Bail: pretrial release. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

No. 10

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

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

December 05, 2016

An act to amend ~~Section 1270 of~~ [Sections 825, 1269, 1269a, 1269c, 1275.1, 1277, 1278, 1284, 1295, and 1318 of, to add Sections 1275a, 1275b, 1318.2, and 1318.3 to, to repeal Sections 815a, 1270, 1270.1, 1270.2, 1288, 1319, and 1319.5 of, and to repeal and add Sections 1269b, 1275, 1289, and 1318.1 of,](#) 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 require the court to release a defendant being held for a misdemeanor offense on his or her own recognizance unless the court makes an additional finding on the record that there is no condition or combination of conditions that would reasonably ensure public safety and the appearance of the defendant if the defendant is released on his or her own recognizance.~~

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 implement a revised pretrial release procedure. The bill would require, except when a person is arrested for certain felonies, 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 an unspecified number of 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 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 assure 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 assure 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 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 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 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.

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: ~~no~~yes Local Program: ~~no~~yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

(d) The commercial money bail system, which requires people to pay nonrefundable deposits to private companies in order to secure release from jail, often leaves people in debt and drives them and their families further into poverty. The commercial money bail system does not improve rates of appearance in court or enhance public safety.

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

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

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

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

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

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

SEC. 2. It is the intent of the Legislature ~~to enact legislation that would~~ *in enacting this act to* 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.

SEC. 3. ~~Section 1270 of the Penal Code is amended to read:~~

~~1270. (a) A person who has been arrested for, or charged with, an offense other than a capital offense may be released on his or her own recognizance by a court or magistrate who could release a defendant from custody upon the defendant giving monetary bail, including a defendant arrested upon an out-of-county warrant. A defendant who is in custody and is arraigned on a complaint alleging an offense which is a misdemeanor, and a defendant who appears before a court or magistrate upon an out-of-county warrant arising out of a case involving only misdemeanors, shall be entitled to an own recognizance release unless the court makes a finding on the record that there is no condition or combination of conditions that would reasonably ensure public safety and the appearance of the defendant as required, and that, in accordance with Section 1275, an own recognizance release will compromise public safety or will not reasonably ensure the appearance of the defendant as required. Public safety shall be the primary consideration. If the court makes one of those findings, the court shall then set monetary bail and specify the conditions, if any, whereunder the defendant shall be released.~~

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

SEC. 3. *Section 815a of the Penal Code is repealed.*

~~815a. At the time of issuing a warrant of arrest, the magistrate shall fix the amount of bail which in his judgment in accordance with the provisions of section 1275 will be reasonable and sufficient for the appearance of the defendant following his arrest, if the offense is bailable, and said magistrate shall endorse upon said warrant a statement signed by him, with the name of his office, dated at the county, city or town where it is made to the following effect "The defendant is to be admitted to bail in the sum of _____ dollars" (stating the amount).~~

SEC. 4. *Section 825 of the Penal Code is amended 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, when the defendant's arrest occurs on a Wednesday after the conclusion of the day's court session, *or if the arrest occurs at any time on a Wednesday* 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. *If the Friday is a court holiday, the defendant shall be taken before the magistrate no later than the Thursday immediately following the Wednesday arrest.*

(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~~ *detainee* or any relative of the ~~prisoner, detainee~~, visit the ~~prisoner, detainee~~. Any officer having charge of the ~~prisoner~~ *detainee* who willfully refuses or neglects to allow that attorney to visit a ~~prisoner~~ *detainee* is guilty of a misdemeanor. Any officer having a ~~prisoner~~ *detainee* in charge, who refuses to allow the attorney to visit the ~~prisoner~~ *detainee* 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.

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

1269. The taking of *monetary* bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient *monetary* bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this state a specified sum. Upon filing, the clerk shall enter in the register of actions the date and amounts of ~~such bond and the bond, the defendant's name, and, if applicable,~~ the name or names of the surety or sureties thereon. In the event of the loss or destruction of such bond, such entries so made shall be prima facie evidence of the due execution of such bond as required by law.

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

SEC. 6. Section 1269a of the Penal Code is amended to read:

1269a. Except as otherwise provided by law, ~~no~~ *a* defendant charged in a warrant of arrest with any public offense shall *not* be discharged from custody upon *monetary* bail except upon a written order of a competent court or magistrate admitting the defendant to bail in the amount ~~specified in the indorsement referred to in Section 815a, determined pursuant to subdivision (c) of Section 1275a~~ and where an undertaking is furnished, upon a written order of ~~such the~~ court or magistrate approving the undertaking. All ~~such those~~ orders ~~must shall~~ be signed by ~~such the~~ court or magistrate and delivered to the officer having custody of the defendant before the defendant is released. Any officer releasing any defendant upon bail otherwise than as herein provided shall be guilty of a misdemeanor.

SEC. 7. Section 1269b of the Penal Code is repealed.

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

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

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

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

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

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

SEC. 8. *Section 1269b is added to the Penal Code, 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, a pretrial services agent, and the clerk of the superior court in which the case against the defendant is pending, may approve and accept an order authorizing pretrial release or admitting to bail, 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) *A person who is arrested and booked into jail for a violent felony, as defined in subdivision (c) of Section 667.5, shall not be considered for release until the person appears before a judge or a magistrate for a hearing in accordance with Section 1275a or 1275b. The pretrial services agency shall not conduct a risk assessment or prepare a pretrial services report for any person who is arrested and booked into jail for a violent felony except in accordance with subdivision (f) of Section 1275a.*

(c) *The pretrial services agency shall, within _____ hours of arrest, conduct a risk assessment on a person arrested and booked into jail for one of the following offenses and prepare a pretrial services report with recommendations for conditions of release, however, the person shall not be considered for release until the person appears before a judge or magistrate for a hearing in accordance with Section 1275a or 1275b:*

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

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

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

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

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

(d) *Except as provided in subdivisions (b) and (c), if a person is arrested and booked into jail, the pretrial services agency shall, immediately upon booking and, except where physically impossible, no later than _____ hours after booking, conduct a pretrial risk assessment on the person and prepare a pretrial services report with recommendations for conditions of release.*

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

(f) (1) Except as otherwise provided in subdivisions (b), (c), and (e), upon completion of the pretrial risk assessment and preparation of a pretrial services report with recommendations for conditions of release, the pretrial services agency shall immediately transmit the pretrial services report and recommendations on conditions of release to a magistrate, judge, or court commissioner. The magistrate, judge, or court commissioner shall, no later than _____ hours after receipt of the pretrial services agency's pretrial risk assessment and pretrial services report with recommendations for conditions of release, issue an oral or written order for release subject to a release agreement under Section 1318 without further conditions or subject to a condition or conditions in accordance with Section 1275a.

(2) If the pretrial services report prepared by the pretrial services agency is not available, the magistrate, judge, or court commissioner shall release the person subject to a release agreement under Section 1318 without further conditions or subject to a condition or conditions in accordance with Section 1275a. The fact that the court has not received the report required under this section shall not preclude release pursuant to this paragraph.

(g) When an arrested person is released from custody under this section, the court in which the charge is pending may, upon a petition by either party alleging that there has been a change in circumstances, amend the release order to impose different or additional conditions of release at the time of arraignment.

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

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

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

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

1269c. If a defendant is arrested without a warrant for a bailable felony offense or for the misdemeanor offense of violating a domestic violence restraining order, and a peace officer has reasonable cause to believe that ~~the amount of bail set forth in the schedule of bail for that offense~~ release subject to a release agreement under Section 1318 without further conditions is insufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, the peace officer ~~shall~~ shall, no later than _____ hours after the arrest, prepare a declaration under penalty of perjury setting forth the facts and circumstances in support of his or her belief and file it with a magistrate, as defined in Section 808, or his or her commissioner, in the county in which the offense is alleged to have been committed or having personal jurisdiction over the defendant, requesting an order ~~setting a higher bail. Except where the defendant is charged with an offense listed in subdivision (a) of Section 1270.1, the defendant, either personally or through his or her attorney, friend, or family member, also may make application to the magistrate for release on bail lower than that provided in the schedule of bail or on his or her own recognizance. 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. If, after the application is made, no order changing the amount of bail is issued within eight hours after booking, the defendant shall be entitled to be released on posting the amount of bail set forth in the applicable bail schedule,~~ pursuant to subdivision (f) of Section 1269b imposing a condition or conditions of release.

SEC. 10. Section 1270 of the Penal Code is repealed.

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

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

SEC. 11. Section 1270.1 of the Penal Code is repealed.

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

~~(1)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, but not including a violation of subdivision (a) of Section 460 (residential burglary).~~

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

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

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

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

~~(c)At the hearing, the court shall consider evidence of past court appearances of the detained person, the maximum potential sentence that could be imposed, and the danger that may be posed to other persons if the detained person is released. In making the determination whether to release the detained person on his or her own recognizance, the court shall consider the potential danger to other persons, including threats that have been made by the detained person and any past acts of violence. The court shall also consider any evidence offered by the detained person regarding 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.~~

SEC. 12. Section 1270.2 of the Penal Code is repealed.

~~1270.2.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.~~

SEC. 13. Section 1275 of the Penal Code is repealed.

~~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.~~

SEC. 14. 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 assure the defendant's appearance in court or at a hearing of the court and protect public safety, the court shall issue an order with findings of fact and a statement explaining what condition or conditions it considered and why those conditions were inadequate.

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

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

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

SEC. 15. Section 1275a is added to the Penal Code, to read:

1275a. (a) Except as provided in subdivision (f) and Section 1275b, at the arraignment of a person who is in custody, the judge or magistrate shall, after considering the pretrial services report with recommendations for conditions of release and any relevant information provided by the prosecuting attorney or the defendant, order the pretrial release of the person subject to a release agreement under Section 1318 without further conditions, unless the judge or magistrate determines that the release will not reasonably assure the appearance of the person as required, the safety of the victim, or public safety. If the judge or magistrate releases the person subject to a release agreement under Section 1318 without further conditions, the reasons for that decision shall be stated in the record and included in the court's minutes.

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

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

(A) A reminder notification to come to court.

(B) Assistance with transportation to and from court.

(3) A person for whom any nonmonetary condition or combination of conditions is imposed shall not be required to pay for those conditions.

(c) (1) If, after considering the pretrial services report with recommendations for conditions of release and any relevant information provided by the prosecuting attorney or the defendant, the judge or magistrate determines that the release described in subdivision (b) will not reasonably assure the appearance of the person as required, the judge or magistrate shall set monetary bail as determined pursuant to paragraph (2). The court may also order monetary bail in combination with the least restrictive nonmonetary condition or combination of nonmonetary conditions that the judge or magistrate determines will reasonably assure the appearance of the person as required, the safety of the victim, and public safety.

(2) (A) Monetary bail shall be set at the least restrictive level necessary to assure the appearance of the defendant in court as required. In setting monetary bail, the court shall conduct an inquiry into the person's ability to pay and shall make a finding that the defendant has the present ability to pay the amount of monetary bail set without substantial hardship.

(B) For the purposes of this paragraph, the following terms have the following meanings:

(i) "Ability to pay" means the defendant's present ability to pay a specified amount without borrowing money, obtaining a loan, or paying for a bond.

(ii) "Substantial hardship" means a significant infringement on a defendant's ability to meet the basic necessities of life for himself or herself and his or her dependents. These basic necessities include, but are not limited to, food, shelter, communication, clothing, transportation, medical and dental care, child care, and education.

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

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

(e) Except as provided in subdivision (f), if the pretrial services report with recommendations for conditions of release is not available at the time the court makes a pretrial detention determination under this section, the court shall, consistent with this section, release the person on the least restrictive condition or conditions that will reasonably assure the appearance of the person in court, the safety of the victim, and public safety, including without further conditions, if appropriate. The fact that the court has not received the report at the time of release consideration shall not preclude that release.

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

(2) If the defendant requests a pretrial risk assessment, the assessment and report shall be completed within _____, and within _____ the defendant shall be considered for release pursuant to subdivisions (a), (b), and (c).

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

SEC. 16. Section 1275b is added to the Penal Code, to read:

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

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

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

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

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

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

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

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

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

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

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

(b) (1) If a motion for pretrial detention is filed pursuant to subdivision (a), a hearing shall be held before a magistrate or judge to determine whether to release the defendant pending trial unless the hearing is waived by the defendant, either directly or, if he or she is represented by counsel, through counsel. The defense attorney shall be given notice and a reasonable opportunity to be heard on the matter. If the defendant does not have counsel, the court shall appoint counsel. The hearing shall be held within the time period prescribed by Section 825, unless the hearing is held after arraignment, in which case the hearing shall be held within 48 hours, or unless waived by the defendant either directly or, if represented by counsel, through counsel.

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

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

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

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

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

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

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

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

(1) The protection of the public.

(2) The safety of the victim.

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

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

(5) The previous criminal record of the defendant.

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

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

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

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

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

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

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

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

SEC. 17. *Section 1275.1 of the Penal Code is amended to read:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 18. *Section 1277 of the Penal Code is amended to read:*

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

SEC. 19. *Section 1278 of the Penal Code is amended to read:*

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

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

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

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

~~(b)~~

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

SEC. 20. *Section 1284 of the Penal Code is amended to read:*

1284. When the offense charged is not punishable with death, the officer serving the bench warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of ~~giving bail. a pretrial release hearing.~~ If the defendant appears before such magistrate without the bench warrant having been served upon him, the magistrate shall deliver him into the custody of the sheriff for the purpose of immediate booking and the recording of identification data, whereupon the sheriff shall deliver the defendant back before the magistrate for the purpose of ~~giving bail. a pretrial release hearing.~~

SEC. 21. *Section 1288 of the Penal Code is repealed.*

~~1288. The provisions contained in sections 1279, 1280, 1280a and 1281, in relation to bail before indictment, apply to bail after indictment.~~

SEC. 22. *Section 1289 of the Penal Code is repealed.*

~~1289. After a defendant has been admitted to bail upon an indictment or information, the Court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the Court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. If application be made by the defendant for a reduction of the amount, notice of the application must be served upon the District Attorney.~~

SEC. 23. Section 1289 is added to the Penal Code, to read:

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

(b) A defendant who has violated the terms or conditions of release ordered by the court may be held in contempt of court pursuant to Title 5 (commencing with Section 1209) of Part 3 of the Code of Civil Procedure upon motion of the prosecuting attorney. An order of contempt shall not issue unless, after a hearing, the court finds both of the following:

(1) That there is either of the following:

(A) Probable cause to believe that the defendant has committed a federal, state, or local crime while on pretrial release.

(B) Evidence that the defendant has violated any condition of release.

(2) That either of the following:

(A) There is no condition or combination of conditions of release that would reasonably assure that the defendant will not flee or pose a danger to any other person or the community.

(B) The defendant is unlikely to abide by any condition or combination of conditions of release.

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

SEC. 24. Section 1295 of the Penal Code is amended to read:

1295. (a) The defendant, ~~or any other person,~~ at any time after an order admitting defendant to bail ~~or after the arrest and booking of a defendant for having committed a misdemeanor,~~ 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, if no order, in the schedule of bail previously fixed by the judges of the court,~~ 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 ~~must~~ 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.

SEC. 25. Section 1318 of the Penal Code is amended to read:

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

~~(1)~~

(a) 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)~~

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

~~(3)~~

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

~~(4)~~

(d) 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)~~

(e) 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.

SEC. 26. *Section 1318.1 of the Penal Code is repealed.*

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

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

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

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

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

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

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

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

SEC. 27. *Section 1318.1 is added to the Penal Code, to read:*

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

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

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

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

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

(b) Each county shall develop a pretrial services agency. The agency shall follow the standards and guidelines set by _____ pursuant to Sections 1318.2 and 1318.3, as well as current best practices and standards for pretrial services agencies and professionals.

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

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

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

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

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

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

SEC. 28. Section 1318.2 is added to the Penal Code, to read:

1318.2. (a) The _____ shall do all of the following:

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

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

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

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

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

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

(4) No later than _____, the _____ shall develop a plan to provide technical assistance to counties regarding the implementation of the pretrial risk assessment selected pursuant to paragraph (3).

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

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

(b) In discharging its responsibilities under this section the _____ may do any of the following:

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

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

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

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

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

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

SEC. 29. Section 1318.3 is added to the Penal Code, to read:

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

(1) "Pretrial risk assessment tool" is the objective, standardized analysis of information about an arrested person that accurately measures the person's probability of appearing in court as required and the person's potential risk of criminal conduct while on pretrial 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 pretrial risk assessment tool selected by _____ pursuant to Section 1318.2 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 shall be regularly validated and adjusted, as appropriate, to ensure that the assessment instrument 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 shall not give undue weight to factors such as criminal history and other factors that correlate with race and class.

(7) It shall not require an in-person interview of an arrested person.

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

(c) If, prior to the effective date of the act that added this section, a county is using a pretrial risk assessment tool, the county may elect to continue using that pretrial risk assessment tool, provided the tool meets the requirements of subdivision (b). For counties that elect to continue use of an existing pretrial risk assessment tool under this subdivision, the _____ shall review the tool to determine whether it meets the requirements of subdivision (b). The _____ shall also review the county's standards for the results produced using the tool to determine whether it meets the requirements contained in the policies developed pursuant to subdivision (f). The county's pretrial risk assessment tool shall be in compliance with the requirements in subdivisions (b) and (g) by _____, as confirmed by the _____. If the county's pretrial risk assessment tool is not in compliance by that date, the county shall use the pretrial risk assessment tool selected by the _____ pursuant to Section 1318.2.

(d) Pursuant to Sections 1269b and 1275a, the pretrial services agency shall conduct a pretrial risk assessment using the pretrial risk assessment tool selected by _____ pursuant to Section 1318.2 or the pretrial risk assessment tool reviewed pursuant to subdivision (c).

(e) (1) The pretrial services agency shall prepare a pretrial services report following the administration of the pretrial risk assessment tool that contains the results of the pretrial risk assessment tool, the offense charged, and a recommendation for release under Section 1318 without further conditions or release subject to the least restrictive further condition or conditions that will reasonably assure the arrested person's appearance in court 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) 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) 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 specified in subdivision (i) with available data on pretrial release prior to the effective date of the act that added this section. The _____ may work with the Board of State and Community Corrections to revise the reporting plan described in subdivision (i) as necessary to improve monitoring of pretrial release in the state.*

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

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

SEC. 30. *Section 1319 of the Penal Code is repealed.*

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

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

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

~~(2)Any other information presented in the report prepared pursuant to Section 1318.1. The fact that the court has not received the report required by Section 1318.1, at the time of the hearing to decide whether to release the defendant on his or her own recognizance, shall not preclude that release.~~

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

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

SEC. 31. *Section 1319.5 of the Penal Code is repealed.*

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

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

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

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

~~(A)Any felony offense.~~

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

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

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

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

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

SEC. 32. *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*