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SENATE BILL

No. 10

Introduced by Senators Hertzberg, Allen, Atkins, Beall, Bradford, Lara, Mitchell, Monning, Skinner, Wieckowski, and Wiener and Assembly Members Bonta and Jones-Sawyer

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

(Coauthors: Assembly Members Gloria and Rendon)

December 5, 2016

~~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. An act to amend Section 27771 of the Government Code, and to add Section 1320.6 to, to add Chapter 1.5 (commencing with Section 1320.7) to Title 10 of Part 2 of, and to repeal Chapter 1 (commencing with Section 1268) of Title 10 of Part 2 of, the Penal Code, relating to pretrial release and detention.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 10, as amended, Hertzberg. ~~Bail: pretrial release.~~ *Pretrial release or detention: pretrial services.*

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 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, as of October 1, 2019, repeal existing laws regarding bail and require that any remaining references to bail refer to the procedures specified in the bill.

This bill would require, commencing October 1, 2019, persons arrested and detained to be subject to a pretrial risk assessment conducted by Pretrial Assessment Services, which the bill would define as an entity, division, or program that is assigned the responsibility to assess the risk level of persons charged with the commission of a crime, report the results of the risk determination to the court, and make recommendations for conditions of release of individuals pending adjudication of their criminal case. The bill would require the courts to establish pretrial assessment services, and would authorize the services to be performed by court employees or through a contract with a local public agency, as specified. The bill would require, if no local agency will agree to perform the pretrial assessments, and if the court elects not to perform the assessments, that the court may contract with

a new local pretrial assessment services agency established specifically to perform the role.

The bill would require a person arrested or detained for a misdemeanor, except as specified, to be booked and released without being required to submit to a risk assessment by Pretrial Assessment Services. The bill would authorize Pretrial Assessment Services to release a person assessed as being a low risk, as defined, on his or her own recognizance, as specified. The bill would additionally require a superior court to adopt a rule authorizing Pretrial Assessment Services to release persons assessed as being a medium risk, as defined, on his or her own recognizance. The bill would prohibit Pretrial Assessment Services from releasing persons who meet specified conditions. If a person is not released, the bill would authorize the court to conduct a prearrest review and release the person. The bill would allow the court to detain the person pending arraignment if there is a substantial likelihood that no condition or combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the person in court.

The bill would require the victim of the crime to be given notice of the arraignment by the prosecution and a chance to be heard on the matter of the defendant's custody status. By imposing additional duties on local prosecutors, this bill would impose a state-mandated local program. The bill would create a presumption that the court will release the defendant on his or her own recognizance at arraignment with the least restrictive nonmonetary conditions that will reasonably assure public safety and the defendant's return to court.

The bill would allow the prosecutor to file a motion seeking detention of the defendant pending trial under specified circumstances. If the court determines that there is a substantial likelihood that no conditions of pretrial supervision will reasonably assure the appearance of the defendant in court or reasonably assure public safety, the bill would authorize the court to detain the defendant pending a preventive detention hearing and require the court to state the reasons for the detention on the record. The bill would prohibit the court from imposing a financial condition.

In cases in which the defendant is detained in custody, the bill would require a preventive detention hearing to be held no later than 3 court days after the motion for preventive detention is filed. The bill would grant the defendant the right to be represented by counsel at the preventive detention hearing and would require the court to appoint

counsel if the defendant is financially unable to obtain representation. By imposing additional duties on county public defenders, this bill would impose a state-mandated local program. The bill would require the prosecutor to give the victim notice of the preventive detention hearing. By imposing new duties on local prosecutors, this bill would impose a state-mandated local program. The bill would create a rebuttable presumption that no condition of pretrial supervision will reasonably assure public safety if, among other things, the crime was a violent felony or the defendant was convicted of a violent felony within the past 5 years. The bill would allow the court to order preventive detention of the defendant pending trial if the court determines by clear and convincing evidence that no condition or combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the defendant in court. If the court determines there is not a sufficient basis for detaining the defendant, the bill would require the court to release the defendant on his or her own recognizance or supervised own recognizance and impose the least restrictive nonmonetary conditions of pretrial release to reasonably assure public safety and the appearance of the defendant.

The bill would require the Judicial Council to adopt Rules of Court and forms to implement these provisions as specified, and to identify specified data to be reported by each court. The bill would require the Judicial Council to, on or before January 1, 2021, and every other year thereafter, to submit a report to the Governor and the Legislature. The bill would provide that upon appropriation by the Legislature, the Judicial Council would allocate funds to local courts for pretrial assessment services and the Department of Finance would allocate funds to local probation departments for pretrial supervision services, as specified.

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.

~~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 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. It is the intent of the Legislature by enacting this*
2 *measure to permit preventive detention of pretrial defendants only*
3 *in a manner that is consistent with the United States Constitution,*
4 *as interpreted by the United States Supreme Court, and only to*
5 *the extent permitted by the California Constitution as interpreted*
6 *by the California courts of review.*

7 *SEC. 2. Section 27771 of the Government Code is amended to*
8 *read:*

9 27771. (a) The chief probation officer shall perform the duties
10 and discharge the obligations imposed on the office by law or by
11 order of the superior court, including the following:

12 (1) Community supervision of offenders subject to the
13 jurisdiction of the juvenile court pursuant to Section 602 or 1766
14 of the Welfare and Institutions Code.

15 (2) Operation of juvenile halls pursuant to Section 852 of the
16 Welfare and Institutions Code.

17 (3) Operation of juvenile camps and ranches established under
18 Section 880 of the Welfare and Institutions Code.

19 (4) Community supervision of individuals subject to probation
20 pursuant to conditions imposed under Section 1203 of the Penal
21 Code.

22 (5) Community supervision of individuals subject to mandatory
23 supervision pursuant to subparagraph (B) of paragraph (5) of
24 subdivision (h) of Section 1170 of the Penal Code.

25 (6) Community supervision of individuals subject to postrelease
26 community supervision pursuant to Section 3451 of the Penal
27 Code.

28 (7) Administration of community-based corrections
29 programming, including, but not limited to, programs authorized
30 by Chapter 3 (commencing with Section 1228) of Title 8 of Part
31 2 of the Penal Code.

32 (8) Serving as chair of the Community Corrections Partnership
33 pursuant to Section 1230 of the Penal Code.

34 (9) Making recommendations to the court, including, but not
35 limited to, pre-sentence investigative reports pursuant to Sections
36 1203.7 and 1203.10 of the Penal Code, *or reports prepared*
37 *pursuant to Section 1320.15 of the Penal Code.*

(b) The chief probation officer may perform other duties that are consistent with those enumerated in subdivision (a) and may accept appointment to the Board of State and Community Corrections and collect the per diem authorized by Section 6025.1 of the Penal Code.

SEC. 3. Section 1320.6 is added to the Penal Code, to read:

1320.6. This chapter shall remain in effect only until October 1, 2019, and as of that date is repealed.

SEC. 4. Chapter 1.5 (commencing with Section 1320.7) is added to Title 10 of Part 2 of the Penal Code, to read:

CHAPTER 1.5. PRETRIAL CUSTODY STATUS

Article 1. Definitions

1320.7. As used in this chapter, the following terms have the following meanings:

(a) “The court” as used in this chapter includes “subordinate judicial officers,” if authorized by the particular superior court, as authorized in Section 22 of Article VI of the California Constitution and specified in Rule 10.703 of the California Rules of Court.

(b) “High risk” means that an arrested person, after determination of the person’s risk following an investigation by Pretrial Assessment Services, including the use of a validated risk assessment tool, is categorized as having a significant level of risk of failure to appear in court as required or risk to public safety due to the commission of a new criminal offense while released on the current criminal offense.

(c) “Low risk” means that an arrested person, after determination of the person’s risk following an investigation by Pretrial Assessment Services, including the use of a validated risk assessment tool, is categorized as having a minimal level of risk of failure to appear in court as required or risk to public safety due to the commission of a new criminal offense while released on the current criminal offense.

(d) “Medium risk” means that an arrested person, after determination of the person’s risk following an investigation by Pretrial Assessment Services, including the use of a validated risk assessment tool, is categorized as having a moderate level of risk

1 of failure to appear in court as required or risk to public safety
2 due to the commission of a new criminal offense while released
3 on the current criminal offense.

4 (e) “Own recognizance release” means the pretrial release of
5 an arrested person who promises in writing to appear in court as
6 required, and without supervision.

7 (f) “Pretrial risk assessment” means an assessment conducted
8 by Pretrial Assessment Services with the use of a validated risk
9 assessment tool, designed to provide information about the risk
10 of a person’s failure to appear in court as required or the risk to
11 public safety due to the commission of a new criminal offense if
12 the person is released before adjudication of his or her current
13 criminal offense.

14 (g) “Pretrial Assessment Services” means an entity, division,
15 or program that is assigned the responsibility, pursuant to Section
16 1320.26, to assess the risk level of persons charged with the
17 commission of a crime, report the results of the risk determination
18 to the court, and make recommendations for conditions of release
19 of individuals pending adjudication of their criminal case, and as
20 directed under statute or rule of court, implement risk-based
21 determinations regarding release and detention. The entity,
22 division, or program, at the option of the particular superior court,
23 may be employees of the court, or employees of a public entity
24 contracting with the court for those services as provided in Section
25 1320.26, and may include an entity, division, or program from an
26 adjoining county or one that provides services as a member of a
27 regional consortium. In all circumstances persons acting on behalf
28 of the entity, division, or program shall be officers of the court.
29 “Pretrial Assessment Services” does not include supervision of
30 persons released under this chapter.

31 (h) “Risk” refers to the likelihood that a person will not appear
32 in court as required or the likelihood that a person will commit a
33 new crime if the person is released before adjudication of his or
34 her current criminal offense.

35 (i) “Risk score” refers to a descriptive evaluation of a person’s
36 risk of failing to appear in court as required or the risk to public
37 safety due to the commission of a new criminal offense if the person
38 is released before adjudication of his or her current criminal
39 offense, as a result of conducting an assessment with a validated

1 risk assessment tool and may include a numerical value or terms
2 such as “high,” “medium,” or “low” risk.

3 (j) “Supervised own recognizance release” means the pretrial
4 release of an arrested person who promises in writing, but without
5 posting money or a secured bond, to appear in court as required,
6 and upon whom the court or Pretrial Assessment Services imposes
7 specified conditions of release.

8 (k) “Validated risk assessment tool” means a risk assessment
9 instrument, selected and approved by the court, in consultation
10 with Pretrial Assessment Services or another entity providing
11 pretrial risk assessments, from the list of approved pretrial risk
12 assessment tools maintained by the Judicial Council. The
13 assessment tools shall be demonstrated by scientific research to
14 be accurate and reliable in assessing the risk of a person failing
15 to appear in court as required or the risk to public safety due to
16 the commission of a new criminal offense if the person is released
17 before adjudication of his or her current criminal offense and
18 minimize bias.

19 (l) “Witness” means any person who has testified or is expected
20 to testify, or who, by reason of having relevant information, is
21 subject to call or likely to be called as a witness in an action or
22 proceeding for the current offense, whether or not any action or
23 proceeding has yet been commenced, and whether or not the person
24 is a witness for the defense or prosecution.

25
26 Article 2. Book and Release
27

28 1320.8. A person arrested or detained for a misdemeanor,
29 other than a misdemeanor listed in subdivision (e) of Section
30 1320.10, may be booked and released without being taken into
31 custody or, if taken into custody, shall be released from custody
32 without a risk assessment by Pretrial Assessment Services within
33 12 hours of booking. This section shall apply to any person who
34 has been arrested for a misdemeanor other than those offenses or
35 factors listed in subdivision (e) of Section 1320.10, whether
36 arrested with or without a warrant.

Article 3. *Pretrial Assessment Services Investigation*

1320.9. (a) *Prior to arraignment, or prior to prearraignment review for those persons eligible for review, Pretrial Assessment Services shall obtain all of the following information regarding each detained person, other than those persons booked and released under Section 1320.8:*

(1) *The results of a risk assessment using a validated risk assessment instrument, including the risk score or risk level.*

(2) *The criminal charge for which the person was arrested and the criminal history of the person, including the person's history of failure to appear in court within the past three years.*

(3) *Any supplemental information reasonably available that directly addresses the arrested person's risk to public safety or risk of failure to appear in court as required.*

(b) *The district attorney shall make a reasonable effort to contact the victim for comment on the person's custody status.*

(c) *Prior to prearraignment review pursuant to subdivision (a) or (b) of Section 1320.10 or Section 1320.13, or prior to arraignment, Pretrial Assessment Services shall prepare a report containing information obtained in accordance with subdivisions (a) and (b), and any recommendations for conditions of the person's release. Options for conditions of release shall be established by the Judicial Council and set forth in the California Rules of Court. A copy of the report shall be served on the court and counsel.*

(d) *The report described in subdivision (c), including the results of a risk assessment using a validated risk assessment instrument, shall not be used for any purpose other than that provided for in this chapter.*

Article 4. *Release by Pretrial Assessment Services*

1320.10. (a) *Pretrial Assessment Services shall conduct a prearraignment review of the facts and circumstances relevant to the arrested person's custody status, and shall consider any relevant and available information provided by law enforcement, the arrested person, any victim, and the prosecution or defense.*

(b) *Pretrial Assessment Services, using the information obtained pursuant to this section and Section 1320.9, and having assessed*

1 a person as having a low risk to public safety and low risk of failure
2 to appear in court, shall release a low risk person on his or her
3 own recognizance, prior to arraignment, without review by the
4 court, and with the least restrictive nonmonetary condition or
5 combination of conditions that will reasonably assure public safety
6 and the person's return to court. This subdivision does not apply
7 to a person booked and released under Section 1320.8 or a person
8 who is ineligible for consideration for release prior to arraignment
9 as set forth in subdivision (e).

10 (c) Pretrial Assessment Services shall order the release or
11 detention of medium risk persons in accordance with the review
12 and release standards set forth in the local rule of court authorized
13 under Section 1320.11. A person released pursuant to the local
14 rule of court shall be released on his or her own recognizance or
15 on supervised own recognizance release, prior to arraignment,
16 without review by the court, and with the least restrictive
17 nonmonetary condition or combination of conditions that will
18 reasonably assure public safety and the person's return to court.
19 This subdivision shall not apply to a person booked and released
20 under Section 1320.8 or a person ineligible for consideration prior
21 to arraignment pursuant to subdivision (e) of this section. Pursuant
22 to Section 1320.13, courts may conduct prearraignment reviews
23 and make release decisions and may authorize subordinate judicial
24 officers to conduct prearraignment reviews and make release
25 decisions authorized by this chapter.

26 (d) A person shall not be required to pay for any nonmonetary
27 condition or combination of conditions imposed pursuant to this
28 section.

29 (e) Notwithstanding subdivisions (a) and (b), Pretrial
30 Assessment Services shall not release:

31 (1) A person who has been assessed in the current case by
32 Pretrial Assessment Services using a validated risk assessment
33 tool pursuant to Section 1320.9 and is assessed as high risk.

34 (2) A person arrested for an offense listed in paragraph (2) or
35 (3) of subdivision (d) of Section 290.

36 (3) A person arrested for any of the following misdemeanor
37 offenses:

38 (A) A violation of Section 273.5.

39 (B) A violation of paragraph (1) of subdivision (e) of Section
40 243.

1 (C) 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 the workplace of, the protected party.

4 (D) A violation of Section 646.9.

5 (4) A person arrested for a felony offense that includes, as an
6 element of the crime for which the person was arrested, physical
7 violence to another person, the threat of such violence, or the
8 likelihood of great bodily injury, or a felony offense in which the
9 person is alleged to have been personally armed with or personally
10 used a deadly weapon or firearm in the commission of the crime,
11 or alleged to have personally inflicted great bodily injury in the
12 commission of the crime.

13 (5) A person arrested for a third offense within the past 10 years
14 of driving under the influence of alcohol or drugs or any
15 combination thereof, or for an offense of driving under the
16 influence of alcohol or drugs with injury to another, or for an
17 offense of driving with a blood alcohol level of .20 or above.

18 (6) A person arrested for a violation of any type of restraining
19 order within the past five years.

20 (7) A person who has three or more prior warrants for failure
21 to appear within the previous 12 months.

22 (8) A person who, at the time of arrest, was pending trial or
23 pending sentencing for a misdemeanor or a felony.

24 (9) A person who, at the time of arrest, was on any form of
25 postconviction supervision other than informal probation or court
26 supervision.

27 (10) A person who has intimidated, dissuaded, or threatened
28 retaliation against a witness or victim of the current crime.

29 (11) A person who has violated a condition of pretrial release
30 within the past five years.

31 (12) A person who has been convicted of a serious felony, as
32 defined in subdivision (c) of Section 1192.7, or a violent felony,
33 as defined in subdivision (c) of Section 667.5, within the past five
34 years.

35 (13) A person arrested with or without a warrant for a serious
36 felony, as defined in subdivision (c) of Section 1192.7, or a “violent
37 felony,” as defined in subdivision (c) of Section 667.5.

38 (f) Review of the person’s custody status and release pursuant
39 to subdivision (b) or (c) shall occur without unnecessary delay,
40 and no later than 24 hours of the person’s booking. The 24-hour

1 period may be extended for good cause, but shall not exceed an
2 additional 12 hours.

3 (g) A person shall not be released on his or her own
4 recognizance in accordance with subdivision (b) or (c) until the
5 person signs a release agreement that includes, at a minimum, all
6 of the following from the person:

7 (1) A promise to appear at all times and places, as ordered by
8 the court.

9 (2) A promise not to depart this state without the permission of
10 the court.

11 (3) Agreement to waive extradition if the person fails to appear
12 as required and is apprehended outside of the State of California.

13 (4) Acknowledgment that he or she has been informed of the
14 consequences and penalties applicable to violation of these
15 conditions of release.

16 (5) Agreement to obey all laws and orders of the court.

17 (h) Persons not released pursuant to this section shall be
18 detained until arraignment unless the court provides
19 prearrest review pursuant to Section 1320.13.

20

21 Article 5. Prearrest Review by Pretrial Assessment
22 Services or the Court
23

24 1320.11. (a) A superior court, in consultation with Pretrial
25 Assessment Services and other stakeholders, shall adopt a local
26 rule of court consistent with the California Rules of Court adopted
27 by the Judicial Council, as described in subdivision (a) of Section
28 1320.25, that sets forth review and release standards for Pretrial
29 Assessment Services for persons assessed as medium risk and
30 eligible for prearrest release on own recognizance or
31 supervised own recognizance. The local rule of court shall provide
32 for the release or detention of medium risk defendants, support an
33 effective and efficient pretrial release or detention system that
34 protects public safety and respects the due process rights of
35 defendants. The local rule shall provide Pretrial Assessment
36 Services with authority to detain or release on own recognizance
37 or supervised own recognizance defendants assessed as medium
38 risk, consistent with the standards for release or detention set forth
39 in the rule. The local rule may further expand the list of offenses
40 and factors for which prearrest release of persons assessed

1 *as medium risk is not permitted but shall not provide for the*
2 *exclusion of release of all medium risk defendants by Pretrial*
3 *Assessment Services. The authority of the local rule of court shall*
4 *be limited to determinations made pursuant to subdivision (c) of*
5 *Section 1320.10. On an annual basis, superior courts shall consider*
6 *the impact of the rule on public safety, the due process rights of*
7 *defendants, and the preceding year's implementation of the rule.*

8 *(b) Pursuant to subdivision (d) of Rule 10.613 of the California*
9 *Rules of Court, the court shall file with the Judicial Council an*
10 *electronic copy of the rule and amendments to the rule adopted*
11 *pursuant to this section in a format authorized by the Judicial*
12 *Council.*

13 *1320.13. (a) The court may conduct prearrest reviews,*
14 *make release decisions, and may authorize subordinate judicial*
15 *officers, as defined in Rule 10.703 of the California Rules of Court,*
16 *to conduct prearrest reviews and make release decisions*
17 *authorized by this chapter.*

18 *(b) The authority for court prearrest review and release*
19 *granted by this section shall not apply to the following persons:*

20 *(1) Persons assessed as high risk.*

21 *(2) Persons charged with a serious felony, as defined in*
22 *subdivision (c) of Section 1192.7, or a violent felony, as defined*
23 *in subdivision (c) of Section 667.5.*

24 *(3) Persons who, at the time of arrest, were pending trial or*
25 *sentencing in a felony matter.*

26 *(c) When making a prearrest release or detention*
27 *determination and ordering conditions of release, the information*
28 *obtained under Section 1320.9 and any recommendations and*
29 *options for conditions of release shall be considered, with*
30 *significant weight given to the recommendations and assessment*
31 *of Pretrial Assessment Services.*

32 *(d) The court shall consider any relevant and available*
33 *information provided by law enforcement, the arrested person,*
34 *any victim, and the prosecution or defense before making a pretrial*
35 *release or detention determination.*

36 *(e) (1) If the court finds the person appropriate for*
37 *prearrest release, the arrested person shall be released on*
38 *the person's own recognizance, or on supervised own*
39 *recognizance, with the least restrictive nonmonetary condition or*

1 combination of conditions that will reasonably assure public safety
2 and the arrested person's appearance in court as required.

3 (2) A person shall not be required to pay for any nonmonetary
4 condition or combination of conditions imposed pursuant to this
5 subdivision.

6 (f) A person released on his or her own recognizance shall sign
7 a release agreement that includes, at a minimum, all of the
8 following from the person:

9 (1) A promise to appear at all times and places, as ordered by
10 the court.

11 (2) A promise not to depart this state without the permission of
12 the court.

13 (3) Agreement to waive extradition if the person fails to appear
14 as required and is apprehended outside of the State of California.

15 (4) Acknowledgment that he or she has been informed of the
16 consequences and penalties applicable to violation of these
17 conditions of release.

18 (5) Agreement to obey all laws and orders of the court.

19 (g) Options for conditions of release shall be established by the
20 Judicial Council and set forth in the California Rules of Court.

21 (h) The court may decline to release a person pending
22 arraignment if there is a substantial likelihood that no condition
23 or combination of conditions of pretrial supervision will reasonably
24 assure public safety or the appearance of the person as required.

25 (i) There shall be a presumption that no condition or
26 combination of conditions of pretrial supervision will reasonably
27 assure the safety of any other person and the community pending
28 arraignment if it is shown that any of the following apply:

29 (1) The crime for which the person was arrested was committed
30 with violence against a person, threatened violence or the
31 likelihood of serious bodily injury, or one in which the person
32 committing the offense was personally armed with or personally
33 used a deadly weapon or firearm in the commission of the crime,
34 or personally inflicted great bodily injury in the commission of
35 the crime.

36 (2) At the time of arrest, the person was on any form of
37 postconviction supervision, other than court supervision or
38 informal probation.

39 (3) The arrested person intimidated, dissuaded, or threatened
40 retaliation against a witness or victim of the current crime.

1 (4) The person is currently on pretrial release and has violated
2 a condition of release.

3 1320.14. For good cause shown, the court may, at any time by
4 its own motion, or upon ex parte application by the arrested
5 person, the prosecution, or Pretrial Assessment Services, modify
6 the conditions of release, with 24 hours' notice, unless time and
7 circumstances do not permit notice within 24 hours.

8
9 Article 6. Release or Detention Determination at Arraignment

10
11 1320.15. At or prior to the defendant's arraignment, Pretrial
12 Assessment Services shall, if the defendant was not released
13 pursuant to Section 1320.8, submit all of the following information
14 for consideration by the court:

15 (a) The results of a risk assessment, including the risk score or
16 risk level, or both, obtained using a validated risk assessment
17 instrument.

18 (b) The criminal charge for which the person was arrested and
19 the criminal history of the person, including the person's history
20 of failure to appear in court within the past three years.

21 (c) Any supplemental information reasonably available that
22 directly addresses the defendant's risk to public safety or risk of
23 failure to appear in court as required.

24 (d) Recommendations to the court for conditions of release to
25 impose upon a released defendant. Options for conditions of
26 release shall be established by the Judicial Council and set forth
27 in the California Rules of Court.

28 1320.16. (a) The victim of the crime for which the defendant
29 was arrested shall be given notice of the arraignment by the
30 prosecution and, if requested, any other hearing at which the
31 custody status of the defendant will be determined. If requested by
32 the victim, the victim shall be given a reasonable opportunity to
33 be heard on the matter of the defendant's custody status.

34 (b) The prosecution shall make a reasonable effort to contact
35 the victim for comment on the defendant's custody status.

36 (c) In instances where a victim cannot or does not wish to
37 appear at the arraignment, the prosecution shall submit any of the
38 victim's comments on the defendant's custody status in writing to
39 the court.

1 (d) The appearance or nonappearance of the victim and any
2 comments provided by the victim shall be included in the record.

3 (e) If requested by either party, the court may review and modify
4 the conditions of the defendant's release at arraignment.

5 1320.17. At arraignment, the court shall order a defendant
6 released on his or her own recognizance or supervised own
7 recognizance with the least restrictive nonmonetary condition or
8 combination of conditions that will reasonably assure public safety
9 and the defendant's return to court unless the prosecution files a
10 motion for preventive detention in accordance with Section
11 1320.18.

12 1320.18. (a) At the defendant's arraignment, or at any other
13 time during the criminal proceedings, the prosecution may file a
14 motion seeking detention of the defendant pending a trial, based
15 on any of the following circumstances:

16 (1) The crime for which the person was arrested was committed
17 with violence against a person, threatened violence, or the
18 likelihood of serious bodily injury, or was one in which the person
19 was personally armed with or personally used a deadly weapon
20 or firearm in the commission of the crime, or was one in which he
21 or she personally inflicted great bodily injury in the commission
22 of the crime.

23 (2) At the time of arrest, the defendant was on any form of
24 postconviction supervision other than informal probation or court
25 supervision.

26 (3) At the time of arrest, the defendant was subject to a pending
27 trial or sentencing on a felony matter.

28 (4) The defendant intimidated or threatened retaliation against
29 a witness or victim of the current crime.

30 (5) There is substantial reason to believe that no nonmonetary
31 condition or combination of conditions of pretrial supervision will
32 reasonably assure protection of the public or a victim, or the
33 appearance of the defendant in court as required.

34 (b) The court shall hold a preventive detention hearing as set
35 forth in Section 1320.19.

36 (c) Upon the filing of a motion for preventive detention, the
37 court shall make a determination regarding release or detention
38 of the defendant pending the preventive detention hearing. When
39 making the release or detention determination and ordering
40 conditions of release pending the preventive detention hearing,

1 the court shall consider the information provided by Pretrial
2 Assessment Services, including recommendations on conditions
3 of release and shall give significant weight to recommendations
4 and assessment of Pretrial Assessment Services.

5 (d) If the court determines there is a substantial likelihood that
6 no nonmonetary condition or combination of conditions of pretrial
7 supervision will reasonably assure the appearance of the defendant
8 at the preventive detention hearing or reasonably assure public
9 safety prior to the preventive detention hearing, the court may
10 detain the defendant pending a preventive detention hearing, and
11 shall state the reasons for detention on the record.

12 (e) (1) If the court determines there is not a sufficient basis for
13 detaining the defendant pending the preventive detention hearing,
14 the court shall release the defendant on his or her own
15 recognizance or on supervised own recognizance and impose the
16 least restrictive nonmonetary condition or combination of
17 conditions of pretrial release to reasonably assure public safety
18 and the appearance of the defendant in court as required.

19 (2) A person shall not be required to pay for any nonmonetary
20 condition or combination of conditions imposed pursuant to this
21 subdivision.

22
23 Article 7. Preventive Detention Hearing
24

25 1320.19. (a) If the defendant is detained in custody, the
26 preventive detention hearing shall be held no later than three court
27 days after the motion for preventive detention is filed. If the
28 defendant is not detained in custody, the preventive detention
29 hearing shall be held no later than three court days after the
30 defendant is brought into custody as a result of a warrant issued
31 in accordance with subdivision (c). If the defendant is not in
32 custody at the time of the request for a preventive detention hearing
33 and the court does not issue a warrant in connection with the
34 request for a hearing, the preventive detention hearing shall be
35 held within five court days of the request for the hearing. By
36 stipulation of counsel and with agreement of the court, the
37 preventive detention hearing may be held in conjunction with the
38 arraignment, or within three days after arraignment.

39 (b) For good cause, the defense or the prosecution may seek a
40 continuance of the preventive detention hearing. If a request for

1 a continuance is granted, the continuance may not exceed three
2 court days unless stipulated by the parties.

3 (c) The hearing shall be completed at one session, unless the
4 defendant personally waives his or her right to a continuous
5 preventive detention hearing. If the defendant is out of custody at
6 the time the preventive detention hearing is requested, the court,
7 upon the filing of an application for a warrant in conjunction with
8 the motion for preventive detention, may issue a warrant requiring
9 the defendant's placement in custody pending the completion of
10 the preventive detention hearing.

11 (d) The defendant shall have the right to be represented by
12 counsel at the hearing. If financially unable to obtain
13 representation, the defendant has a right to have counsel
14 appointed. The defendant has the right to be heard at the preventive
15 detention hearing.

16 (e) Upon request of the victim of the crime, the victim shall be
17 given notice by the prosecution of the preventive detention hearing.
18 If requested, the victim shall be given a reasonable opportunity to
19 be heard on the matter of the defendant's custody status.

20 (f) The prosecution shall make a reasonable effort to contact
21 the victim for comment on the defendant's custody status. In
22 instances where a victim cannot or does not wish to appear at the
23 preventive detention hearing, the prosecution shall submit the
24 victim's comments, if any, on the defendant's custody status in
25 writing to the court and counsel.

26 (g) The appearance or nonappearance of a victim, and
27 comments provided by a victim, shall be included in the record.

28 1320.20. (a) There shall be a rebuttable presumption that no
29 condition or combination of conditions of pretrial supervision will
30 reasonably assure public safety if the court finds probable cause
31 to believe either of the following:

32 (1) The current crime is a violent felony as defined in subdivision
33 (c) of Section 667.5, or was a felony offense committed with
34 violence against a person, threatened violence, or with a likelihood
35 of serious bodily injury, or one in which the defendant was
36 personally armed with or personally used a deadly weapon or
37 firearm in the commission of the crime, or was one in which he or
38 she personally inflicted great bodily injury in the commission of
39 the crime; or

1 (2) The defendant is assessed as “high risk” to the safety of the
2 public or a victim and any of the following:

3 (A) The defendant was convicted of a serious felony as defined
4 in subdivision (c) of Section 1192.7 or a violent felony as defined
5 in subdivision (c) of Section 667.5, within the past 5 years.

6 (B) The defendant committed the current crime while pending
7 sentencing for a crime described in paragraph (1) of subdivision
8 (a).

9 (C) The defendant has intimidated, dissuaded, or threatened
10 retaliation against a witness or victim of the current crime.

11 (D) At the time of arrest, the defendant was on any form of
12 postconviction supervision other than informal probation or court
13 supervision.

14 (b) The prosecution shall establish at the preventive detention
15 hearing that there is probable cause to believe the defendant
16 committed the charged crime or crimes in cases where there is no
17 indictment, or if the defendant has not been held to answer
18 following a preliminary hearing or waiver of a preliminary
19 hearing, and the defendant challenges the sufficiency of the
20 evidence showing that he or she committed the charged crime or
21 crimes.

22 (c) The court shall make its decision regarding preventive
23 detention, including the determination of probable cause to believe
24 the defendant committed the charged crime or crimes, based on
25 the statements, if any, of the defendant, offers of proof and
26 argument of counsel, input from a victim, if any, and any evidence
27 presented at the hearing. The court may consider reliable hearsay
28 in making any decision under this section. The defendant shall
29 have the right to testify at the hearing.

30 (d) (1) At the detention hearing, the court may order preventive
31 detention of the defendant pending trial or other hearing only if
32 the detention is permitted under the United States Constitution
33 and under the California Constitution, and the court determines
34 by clear and convincing evidence that no nonmonetary condition
35 or combination of conditions of pretrial supervision will reasonably
36 assure public safety or the appearance of the defendant in court
37 as required. The court shall state the reasons for ordering
38 preventive detention on the record.

39 (2) Upon the request of either party, a transcript of the hearing
40 shall be provided within two court days after the request is made.

1 (3) If either party files a writ challenging the decision, the court
2 of appeal shall expeditiously consider that writ.

3 (e) (1) If the court determines there is not a sufficient basis for
4 detaining the defendant, the court shall release the defendant on
5 his or her own recognizance or supervised own recognizance and
6 impose the least restrictive nonmonetary condition or combination
7 of conditions of pretrial release to reasonably assure public safety
8 and the appearance of the defendant in court as required.

9 (2) A person shall not be required to pay for any nonmonetary
10 condition or combination of conditions imposed pursuant to this
11 subdivision.

12 (f) Solely for the purpose of determining whether the person
13 should be detained or to establish the least restrictive nonmonetary
14 conditions of pretrial release to impose, the court may take into
15 consideration any relevant information, as set forth in a California
16 Rule of Court, including, but not limited to, all of the following:

17 (1) The nature and circumstances of the crime charged.

18 (2) The weight of the evidence against the defendant, except
19 that the court may consider the admissibility of any evidence sought
20 to be excluded.

21 (3) The defendant's past conduct, family and community ties,
22 criminal history, and record concerning appearance at court
23 proceedings.

24 (4) Whether, at the time of the current crime or arrest, the
25 defendant was on probation, parole, or on another form of
26 supervised release pending trial, sentencing, appeal, or completion
27 of sentence for an offense under federal law, or the law of this or
28 any other state.

29 (5) The nature and seriousness of the risk to the safety of any
30 other person or the community posed by the defendant's release,
31 if applicable.

32 (6) The recommendation of Pretrial Assessment Services
33 obtained using a validated risk assessment instrument.

34 (7) The impact of detention on the defendant's family
35 responsibilities and community ties, employment, and participation
36 in education.

37 (8) Any proposed plan of supervision.

38 (g) If a defendant is released from custody following a preventive
39 detention hearing, the court, in the document authorizing the

1 defendant's release, shall notify the defendant of both of the
2 following:

3 (1) All the conditions, if any, to which the release is subject, in
4 a manner sufficiently clear and specific to serve as a guide for the
5 defendant's conduct.

6 (2) The penalties for and other consequences of violating a
7 condition of release, which may include the immediate arrest or
8 issuance of a warrant for the defendant's arrest.

9 1320.21. (a) Upon a showing of newly discovered evidence,
10 facts, or material change in circumstances, the prosecution or
11 defense may file a motion to reopen a preventive detention hearing
12 or for a new hearing at any time before trial. The court, on its own
13 motion, may reopen a preventive detention hearing based on newly
14 discovered evidence, facts, or a material change in circumstances
15 brought to the court's attention by Pretrial Assessment Services.

16 (b) Any motion for a hearing after the initial preventive detention
17 hearing shall state the evidence or circumstances not known at
18 the time of the preventive detention hearing or the material change
19 in circumstances warranting a reopened or new preventive
20 detention hearing, including whether there are conditions of
21 release that will reasonably assure public safety and the
22 defendant's return to court as required.

23 (c) Upon request of the victim of the crime, the victim shall be
24 given notice by the prosecution of the reopened preventive
25 detention hearing. If requested, the victim shall be given a
26 reasonable opportunity to be heard on the matter of the defendant's
27 custody status.

28 (d) The court may grant the motion to reopen a preventive
29 detention hearing or for a new hearing upon good cause shown.

30 (e) The court's determination regarding the custody status of
31 the defendant shall be made in accordance with the provisions of
32 this chapter.

33 1320.22. The court may issue a warrant for the defendant's
34 arrest upon an ex parte application showing that the defendant
35 has violated a condition of release imposed by the court. Upon the
36 defendant's arrest, his or her custody status shall be reviewed in
37 accordance with this chapter.

38 1320.23. (a) If the court issues an arrest warrant, or a bench
39 warrant based upon a defendant's failure to appear in court as
40 required, or upon allegations that the defendant has violated a

1 condition of pretrial or postconviction supervision, the court may
2 indicate on the face of the warrant whether, at the time the
3 defendant is arrested on the warrant, the defendant should be
4 booked and released, detained for an initial review, detained
5 pending arraignment, or detained pending a hearing on the
6 violation of supervision.

7 (b) If the prosecution, law enforcement, or supervising agency
8 requests a warrant with a custody status for the defendant other
9 than book and release, the agency shall provide the court with the
10 factors justifying a higher level of supervision or detention.

11 (c) The court's release or detention indication on the warrant
12 shall be binding on the arresting and booking agency and the
13 custody facility, but is not binding on any subsequent decision by
14 a court or Pretrial Assessment Services. The indication is, however,
15 one factor that may be considered by Pretrial Assessment Services
16 or the court when determining the person's custody status in
17 subsequent proceedings.

18 (d) If the person is arrested on a misdemeanor warrant, the
19 determination of the person's custody status shall start with the
20 procedures set forth in Section 1320.8. If the person is arrested
21 on a felony warrant, the determination of the person's custody
22 status shall start with the procedures set forth in Section 1320.9.

23
24 *Article 8. Administrative Responsibilities of the Judicial Council*
25

26 1320.24. (a) The Judicial Council shall adopt California Rules
27 of Court and forms, as needed, to do all of the following:

28 (1) Prescribe the proper use of pretrial risk assessment
29 information by the court when making pretrial release and
30 detention decisions that take into consideration the safety of the
31 public and victims, the due process rights of the defendant, specific
32 characteristics or needs of the defendant, and availability of local
33 resources to effectively supervise individuals while maximizing
34 efficiency.

35 (2) Describe the elements of "validation," address the necessity
36 and frequency of validation of risk assessment tools on local
37 populations, and address the identification and mitigation of any
38 implicit bias in assessment instruments.

39 (3) Prescribe standards for review, release, and detention by
40 Pretrial Assessment Services and the court, that shall include a

1 standard authorizing prearrestment detention if there is a
2 substantial likelihood that no nonmonetary condition or
3 combination of conditions of pretrial supervision will reasonably
4 assure public safety or the appearance of the person as required.

5 (4) Prescribe the parameters of the local rule of court authorized
6 in Section 1320.11, taking into consideration the safety of the
7 public and the victims, the due process rights of the defendant,
8 and availability of local resources to effectively supervise
9 individuals while maximizing efficiency.

10 (5) Prescribe the imposition of pretrial release conditions,
11 including the designation of risk levels or categories.

12 (b) The Judicial Council shall identify and define the minimum
13 required data to be reported by each court. Courts shall submit
14 data twice a year to the Judicial Council. Data will include, but
15 not be limited to, the number of incidences in which individuals
16 are:

17 (1) Assessed using a validated risk assessment tool, and the risk
18 level of those individuals.

19 (2) Released on own recognizance or supervised own
20 recognizance pursuant to:

21 (A) Subdivision (b) of Section 1320.10.

22 (B) Subdivision (c) of Section 1320.10.

23 (C) Section 1320.12, disaggregated by risk level.

24 (D) Section 1320.13, disaggregated by risk level.

25 (3) Detained at:

26 (A) Arrestment, disaggregated by risk level.

27 (B) A pretrial detention hearing, disaggregated by risk level.

28 (4) Released pretrial on own recognizance or on supervised
29 own recognizance release who:

30 (A) Fail to appear at a required court appearance.

31 (B) Have charges filed for a new crime.

32 (5) Considered for release or detention at a preventive detention
33 hearing.

34 (c) Pursuant to a contract under subdivision (a) of Section
35 1320.26, courts may require the entity providing pretrial
36 assessment services to report the data in this section to the Judicial
37 Council, where appropriate.

38 (d) On an annual basis, each court shall provide the following
39 information to the Judicial Council:

1 (1) *Whether the court conducts prearrest reviews pursuant*
2 *to Section 1320.13.*

3 (2) *The estimated amount of time required for making release*
4 *and detention decisions at arraignment and preventive detention*
5 *hearings.*

6 (3) *The validated risk assessment tool used by Pretrial*
7 *Assessment Services.*

8 (e) *The Judicial Council shall do all of the following:*

9 (1) *Compile and maintain a list of validated pretrial risk*
10 *assessment tools including those that are appropriate to assess*
11 *for domestic violence, sex crimes, and other crimes of violence.*
12 *The Judicial Council shall consult with Pretrial Assessment*
13 *Services and other stakeholders in compiling the list of assessment*
14 *tools.*

15 (2) *Collect data as prescribed in subdivision (b).*

16 (3) *Train judges on the use of pretrial risk assessment*
17 *information when making pretrial release and detention decisions,*
18 *and on the imposition of pretrial release conditions.*

19 (4) *In consultation with the Chief Probation Officers of*
20 *California, assist courts in developing contracts with local public*
21 *entities regarding the provision of pretrial assessment services.*

22 (5) *On or before January 1, 2021, and every other year*
23 *thereafter, submit a report to the Governor and the Legislature*
24 *documenting program implementation activities and providing*
25 *data on program outputs and outcomes. The initial report shall*
26 *focus on program implementation, and subsequent reports shall*
27 *contain the data described in subdivision (b). A report to be*
28 *submitted pursuant to this paragraph shall be submitted in*
29 *compliance with Section 9795 of the Government Code.*

30 (6) *Develop, in collaboration with the superior courts, an*
31 *estimate of the amount of time taken at arraignment to make a*
32 *release or detention determination when the determination is*
33 *initially made at arraignment, and the estimated amount of time*
34 *required for a preventive detention hearing.*

35 (7) *Convene a panel of subject matter experts and judicial*
36 *officers to carry out the responsibilities described in subdivision*
37 *(a) of Section 1320.25 and make the information available to*
38 *courts.*

39 1320.25. (a) *The panel of experts and judicial officers as set*
40 *forth in paragraph (7) of subdivision (e) of Section 1320.24 shall*

1 designate “low,” “medium,” and “high” risk levels based upon
2 the scores or levels provided by the instrument for use by Pretrial
3 Assessment Services in carrying out their responsibilities pursuant
4 to Section 1320.9.

5 (b) The Chief Justice shall designate four individuals with
6 specific subject matter expertise on scoring pretrial risk assessment
7 instruments and three judicial officers with criminal law expertise,
8 one of whom shall be the chair, to serve on this panel. At least one
9 of the experts must have expertise in the potential impact of bias
10 in risk assessment instruments in addition to scoring risk
11 assessments.

12 1320.26. (a) The courts shall establish pretrial assessment
13 services. The services may be performed by court employees or
14 the court may contract for those services with a qualified local
15 public agency with relevant experience.

16 (b) Before the court decides to not enter into a contract with a
17 qualified local public agency, the court shall find that agency will
18 not agree to perform this function with the resources available or
19 does not have the capacity to perform the function.

20 (c) If no qualified local agency will agree to perform this pretrial
21 assessment function for a superior court, and the court elects not
22 to perform this function, the court may contract with a new local
23 pretrial assessment services agency established to specifically
24 perform this role.

25 (d) For the purpose of the provision of pretrial assessment
26 services, the court may not contract with a qualified local public
27 agency that has primary responsibility for making arrests and
28 detentions within the jurisdiction.

29 (e) Pretrial assessment services shall be performed by public
30 employees.

31 (f) Notwithstanding subdivision (h), the Superior Court of the
32 County of Santa Clara may contract with the Office of Pretrial
33 Services of the County of Santa Clara to provide pretrial
34 assessment services within the County of Santa Clara and that
35 office shall be eligible for funding allocations pursuant to
36 subdivision (c) of Section 1320.27 and Section 1320.28.

37 (g) On or before February 1, 2019, the presiding judge of the
38 superior court and the chief probation officer of each county, or
39 the director of the County of Santa Clara’s Office of Pretrial
40 Services for that county, shall submit to the Judicial Council a

1 letter confirming their intent to contract for pretrial assessment
2 services pursuant to this section.

3 (h) For the purposes of this section:

4 (1) “Pretrial Assessment Services” does not include supervision
5 of persons released under this chapter.

6 (2) A “qualified local public agency” is one with experience in
7 all of the following:

8 (A) Relevant expertise in making risk-based determinations.

9 (B) Making recommendations to the courts pursuant to Section
10 1203.

11 (C) Supervising offenders in the community.

12 (D) Employing peace officers.

13 1320.27. (a) On or before January 10 of each year, the
14 Department of Finance, in consultation with the Judicial Council
15 and the Chief Probation Officers of California, shall estimate the
16 level of funding needed to adequately support the pretrial
17 assessment services provided pursuant to this chapter. The estimate
18 shall be based on a methodology developed by the Department of
19 Finance, in consultation with the Judicial Council of California,
20 that will incorporate the estimated number of defendants charged
21 with a criminal offense who receive a risk assessment, direct and
22 indirect costs associated with conducting risk assessments, and
23 all costs associated with making release and detention decisions
24 by the court and pretrial services. The estimate shall also reflect
25 the direct and indirect cost of staff necessary to perform this
26 function. The department shall publish its estimate and transmit
27 it to the Legislature at the time of the submission of the Governor’s
28 Budget pursuant to Section 12 of Article IV of the California
29 Constitution.

30 (b) Upon appropriation by the Legislature, the Judicial Council
31 shall allocate funds to local courts for Pretrial Assessment
32 Services. Funds shall be allocated after consultation with key
33 stakeholders, including court executives, representatives of
34 employees, and the Chief Probation Officers of California. As
35 determined by the Judicial Council, the allocation shall include a
36 base amount to support pretrial assessment services across the
37 state and additional funding based on appropriate criteria. The
38 Judicial Council shall consider regional variances in costs, pay
39 scales, and other factors when making allocation determinations.
40 The statewide allocation of the annual funding for pretrial services

1 shall be adopted by the Judicial Council at a public meeting and
2 shall be published publicly.

3 (c) All funds for pretrial assessment services shall be spent on
4 direct and indirect costs exclusively related to the delivery of those
5 services. Local courts contracting for pretrial assessment services
6 entering into contracts pursuant to Section 1320.26 shall provide
7 all funds received through this allocation directly to the contracting
8 public entity.

9 (d) Local public entities receiving an allocation pursuant to this
10 section shall separately account for these funds and annually
11 certify that funds have been spent in accordance with relevant
12 state law, including the requirements of this section.

13 (e) Funds allocated pursuant to this section shall supplement
14 and not supplant current local funding to support pretrial
15 assessment services.

16 1320.28. (a) By January 10 of each year, the Department of
17 Finance, in consultation with the Judicial Council and the Chief
18 Probation Officers of California, shall estimate the level of
19 resources needed to adequately support the provision of pretrial
20 supervision services provided pursuant to this chapter. The
21 estimate shall reflect the number of individuals being supervised
22 and the level of supervision required. The estimate shall also reflect
23 the direct and indirect cost of personnel necessary to provide these
24 services. The department shall publish its estimate and transmit
25 it to the Legislature at the time of the submission of the Governor's
26 Budget pursuant to Section 12 of Article IV of the California
27 Constitution.

28 (b) Upon appropriation by the Legislature, the Department of
29 Finance shall allocate funds to local probation departments for
30 pretrial supervision services. For the purposes of this subdivision,
31 the County of Santa Clara's Office of Pretrial Services shall be
32 eligible for funding within that county. In allocating the funds, the
33 department shall consider regional variances in costs, pay scales,
34 and other factors when making allocation determinations.
35 Allocations shall include a base portion to support pretrial
36 supervision across the state, and an additional amount based at
37 least in part on the county's population of adults between 18 and
38 50 years of age, and local arrest rates. The Department of Finance
39 shall consult with the Judicial Council, the Chief Probation
40 Officers of California, and key stakeholders, including

1 *representatives of employees, when adopting the annual allocation*
2 *methodology.*

3 *(c) All funds for pretrial supervision shall be spent on direct*
4 *and indirect costs exclusively related to the delivery of these*
5 *services. All funds appropriated to support pretrial services shall*
6 *be allocated to local entities to support pretrial supervision.*

7 *(d) Local public entities receiving an allocation pursuant to this*
8 *section shall separately account for these funds and annually*
9 *certify that funds have been spent in accordance with relevant*
10 *state law, including the requirements of this section.*

11 *(e) Local public entities shall only be eligible for this funding*
12 *when they contract with a court for the provision of pretrial*
13 *assessment services.*

14 *(f) Funds allocated pursuant to this section shall supplement*
15 *and not supplant current local funding to support pretrial*
16 *assessment services.*

17 *1320.29. By January 10 of each year, the Department of*
18 *Finance, in consultation with the Judicial Council, shall estimate*
19 *the level of resources needed to adequately support the Judiciary's*
20 *workload under this chapter. The estimate shall reflect the number*
21 *of cases where the court is making detention determinations at*
22 *arraignment, the volume of preventive detention hearings, the*
23 *average amount of time required to make these determinations*
24 *and to conduct the hearings, administrative costs associated with*
25 *contracts for pretrial assessment services, and other factors*
26 *relating to the Judiciary's workload pursuant to this act. The*
27 *estimate shall also reflect average direct and indirect cost per*
28 *minute of trial court proceedings. The department shall publish*
29 *its estimate and transmit it to the Legislature at the time of the*
30 *submission of the Governor's Budget pursuant to Section 12 of*
31 *Article IV of the California Constitution.*

32 *1320.30. (a) Upon appropriation by the Legislature, the Board*
33 *of State and Community Corrections shall contract with an*
34 *academic institution, public policy center, or other research entity*
35 *for an independent evaluation of the act that enacted this section,*
36 *particularly of the impact of the act by race, ethnicity, gender, and*
37 *income level. This evaluation shall be submitted to the Secretary*
38 *of the State Senate and the Chief Clerk of the State Assembly by*
39 *no later than January 1, 2024.*

1 (b) Beginning in the 2019–20 fiscal year, state funds shall
2 supplement, not supplant, local funds allocated to pretrial
3 supervision, assessments, services or other purposes related to
4 pretrial activities, excluding detention.

5 1320.31. (a) It is the intent of the Legislature that, to the extent
6 practicable, priority for available jail capacity shall be for the
7 postconviction population.

8 (b) The Legislature finds and declares that implementation of
9 this chapter will require funds necessary to support pretrial risk
10 assessment services, pretrial supervision, increased trial court
11 workload, and necessary statewide activities to support effective
12 implementation. These funds are reflected in the most recent longer
13 term state spending plan and will be subject to appropriation in
14 the annual Budget Act.

15 1320.32. Commencing October 1, 2019, all references in this
16 code to “bail” shall refer to the procedures specified in this
17 chapter.

18 1320.33. (a) Defendants released on bail before October 1,
19 2019, shall remain on bail pursuant to the terms of their release.

20 (b) Defendants in custody on October 1, 2019, shall be
21 considered for release pursuant to Section 1320.8, and, if not
22 released, shall receive a risk assessment and be considered for
23 release or detention pursuant to this chapter.

24 1320.34. This chapter shall become operative on October 1,
25 2019.

26 SEC. 5. To the extent practicable, Judicial Council shall
27 coordinate with the Chief Probation Officers of California to
28 provide training efforts, conduct joint training, and otherwise
29 collaborate in necessary startup functions to carry out this act.

30 SEC. 6. If the Commission on State Mandates determines that
31 this act contains costs mandated by the state, reimbursement to
32 local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.

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

37 ~~(a) Modernization of the pretrial system is urgently needed in~~
38 ~~California, where thousands of individuals held in county jails~~
39 ~~across the state have not been convicted of a crime and are detained~~
40 ~~while awaiting trial simply because they cannot afford to post~~

1 money bail or pay a commercial bail bond company. In 2015, 63
2 percent of people in California jails were either awaiting trial or
3 sentencing. In 2016, the percentage of people in California jails
4 awaiting trial or sentencing rose to 66 percent. As compared with
5 the rest of the country, California has relied on pretrial detention
6 at much higher rates than other states.

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

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

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

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

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

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

38 (h) Pretrial services programs have already been successfully
39 implemented in many California jurisdictions and have helped to

1 ~~reduce pretrial jail populations, save money, increase rates of~~
2 ~~appearance in court, and protect the public.~~

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

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

13 ~~SEC. 2. It is the intent of the Legislature in enacting this act~~
14 ~~to safely reduce the number of people detained pretrial, while~~
15 ~~addressing racial and economic disparities in the pretrial system,~~
16 ~~and to ensure that people are not held in pretrial detention simply~~
17 ~~because of their inability to afford money bail.~~

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

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

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

34 ~~(b) After the arrest, any attorney at law entitled to practice in~~
35 ~~the courts of record of California, may, at the request of the~~
36 ~~prisoner or any relative of the prisoner, visit the prisoner. Any~~
37 ~~officer having charge of the prisoner who willfully refuses or~~
38 ~~neglects to allow that attorney to visit a prisoner is guilty of a~~
39 ~~misdemeanor. Any officer having a prisoner in charge, who refuses~~
40 ~~to allow the attorney to visit the prisoner when proper application~~

1 is made, shall forfeit and pay to the party aggrieved the sum of
2 five hundred dollars (\$500), to be recovered by action in any court
3 of competent jurisdiction.

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

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

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

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

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

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

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

34 1269. (a) The taking of bail consists in the acceptance, by a
35 competent court or magistrate, of the undertaking of sufficient bail
36 for the appearance of the defendant, according to the terms of the
37 undertaking, or that the bail will pay to the people of this state a
38 specified sum. Upon filing, the clerk shall enter in the register of
39 actions the date and amounts of such bond and the name or names
40 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 remain in effect only until January 1, 2020,
11 and as of that date is repealed.~~

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

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

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

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

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

32 1269a. ~~(a) Except as otherwise provided by law, a defendant
33 charged in a warrant of arrest with any public offense shall not be
34 discharged from custody upon bail except upon a written order of
35 a competent court or magistrate admitting the defendant to bail in
36 the amount specified in the indorsement referred to in Section
37 815a, and where an undertaking is furnished, upon a written order
38 of the court or magistrate approving the undertaking. All those
39 orders shall be signed by the court or magistrate and delivered to
40 the officer having custody of the defendant before the defendant~~

1 is released. Any officer releasing any defendant upon bail otherwise
2 than as herein provided shall be guilty of a misdemeanor.

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

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

6 1269a. (a) Except as otherwise provided by law, a defendant
7 charged in a warrant of arrest with any public offense shall not be
8 discharged from custody upon monetary bail except upon a written
9 order of a competent court or magistrate admitting the defendant
10 to bail in the amount determined pursuant to subdivision (c) of
11 Section 1275a and where an undertaking is furnished, upon a
12 written order of the court or magistrate approving the undertaking.
13 All those orders shall be signed by the court or magistrate and
14 delivered to the officer having custody of the defendant before the
15 defendant is released. Any officer releasing any defendant upon
16 bail otherwise than as herein provided shall be guilty of a
17 misdemeanor.

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

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

20 1269b. (a) The officer in charge of a jail in which an arrested
21 person is held in custody, an officer of a sheriff's department or
22 police department of a city who is in charge of a jail or is employed
23 at a fixed police or sheriff's facility and is acting under an
24 agreement with the agency that keeps the jail in which an arrested
25 person is held in custody, an employee of a sheriff's department
26 or police department of a city who is assigned by the department
27 to collect bail, the clerk of the superior court of the county in which
28 the offense was alleged to have been committed, and the clerk of
29 the superior court in which the case against the defendant is
30 pending may approve and accept bail in the amount fixed by the
31 warrant of arrest, schedule of bail, or order admitting to bail in
32 cash or surety bond executed by a certified, admitted surety insurer
33 as provided in the Insurance Code, to issue and sign an order for
34 the release of the arrested person, and to set a time and place for
35 the appearance of the arrested person before the appropriate court
36 and give notice thereof.

37 (b) If a defendant has appeared before a judge of the court on
38 the charge contained in the complaint, indictment, or information,
39 the bail shall be in the amount fixed by the judge at the time of the
40 appearance. If that appearance has not been made, the bail shall

1 be in the amount fixed in the warrant of arrest or, if no warrant of
2 arrest has been issued, the amount of bail shall be pursuant to the
3 uniform countywide schedule of bail for the county in which the
4 defendant is required to appear, previously fixed and approved as
5 provided in subdivisions (c) and (d).

6 (c) ~~It is the duty of the superior court judges in each county to~~
7 ~~prepare, adopt, and annually revise a uniform countywide schedule~~
8 ~~of bail for all bailable felony offenses and for all misdemeanor~~
9 ~~and infraction offenses except Vehicle Code infractions. The~~
10 ~~penalty schedule for infraction violations of the Vehicle Code shall~~
11 ~~be established by the Judicial Council in accordance with Section~~
12 ~~40310 of the Vehicle Code.~~

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

18 (e) ~~In adopting a uniform countywide schedule of bail for all~~
19 ~~bailable felony offenses the judges shall consider the seriousness~~
20 ~~of the offense charged. In considering the seriousness of the offense~~
21 ~~charged the judges shall assign an additional amount of required~~
22 ~~bail for each aggravating or enhancing factor chargeable in the~~
23 ~~complaint, including, but not limited to, additional bail for charges~~
24 ~~alleging facts that would bring a person within any of the following~~
25 ~~sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9,~~
26 ~~667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5,~~
27 ~~12022.53, 12022.6, 12022.7, 12022.8, or 12022.9 of this code, or~~
28 ~~Section 11356.5, 11370.2, or 11370.4 of the Health and Safety~~
29 ~~Code.~~

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

35 (f) ~~The countywide bail schedule shall contain a list of the~~
36 ~~offenses and the amounts of bail applicable for each as the judges~~
37 ~~determine to be appropriate. If the schedule does not list all~~
38 ~~offenses specifically, it shall contain a general clause for designated~~
39 ~~amounts of bail as the judges of the county determine to be~~
40 ~~appropriate for all the offenses not specifically listed in the~~

1 schedule. A copy of the countywide bail schedule shall be sent to
2 the officer in charge of the county jail, to the officer in charge of
3 each city jail within the county, to each superior court judge and
4 commissioner in the county, and to the Judicial Council.

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

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

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

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

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

20 1269b. (a) The officer in charge of a jail in which an arrested
21 person is held in custody, an officer of a sheriff's department or
22 police department of a city who is in charge of a jail or is employed
23 at a fixed police or sheriff's facility and is acting under an
24 agreement with the agency that keeps the jail in which an arrested
25 person is held in custody, an employee of a sheriff's department
26 or police department of a city who is assigned by the department
27 to collect bail, the clerk of the superior court of the county in which
28 the offense was alleged to have been committed, a pretrial services
29 agent, and the clerk of the superior court in which the case against
30 the defendant is pending, may approve and accept an order
31 authorizing pretrial release or admitting to bail, to issue and sign
32 an order for the release of the arrested person, and to set a time
33 and place for the appearance of the arrested person before the
34 appropriate court and give notice thereof.

35 (b) Except as provided in Section 821, a person who is arrested
36 and booked into jail for a violent felony, as defined in subdivision
37 (c) of Section 667.5, shall not be considered for release until the
38 person appears before a judge or a magistrate for a hearing in
39 accordance with Section 1275a or 1275b. The pretrial services
40 agency shall not conduct a risk assessment or prepare a pretrial

1 services report for any person who is arrested and booked into jail
2 for a violent felony except in accordance with subdivision (f) of
3 Section 1275a.

4 (c) Except as provided in Section 821, the pretrial services
5 agency shall, within 24 hours of arrest, conduct a risk assessment
6 on a person arrested and booked into jail for one of the following
7 offenses and prepare a pretrial services report with
8 recommendations for conditions of release, however, the person
9 shall not be considered for release until the person appears before
10 a judge or magistrate for a hearing in accordance with Section
11 1275a or 1275b:

12 (1) A serious felony, as defined in subdivision (c) of Section
13 1192.7, except a violation of subdivision (a) of Section 460.

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

16 (3) A violation of paragraph (1) of subdivision (e) of Section
17 243.

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

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

23 (d) Except as provided in subdivisions (b) and (c) of this section
24 and Section 821, if a person is arrested and booked into jail, the
25 pretrial services agency shall, immediately upon booking and,
26 except where physically impossible, no later than six hours after
27 booking, conduct a pretrial risk assessment on the person and
28 prepare a pretrial services report with recommendations for
29 conditions of release.

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

39 (f) (1) Except as otherwise provided in subdivisions (b), (c),
40 and (e) of this section and Section 821, upon completion of the

1 pretrial risk assessment and preparation of a pretrial services report
2 with recommendations for conditions of release, the pretrial
3 services agency shall immediately transmit the pretrial services
4 report and recommendations on conditions of release to a
5 magistrate, judge, or court commissioner. The magistrate, judge,
6 or court commissioner shall, no later than six hours after receipt
7 of the pretrial services agency's pretrial risk assessment and pretrial
8 services report with recommendations for conditions of release,
9 issue an oral or written order for release subject to a release
10 agreement under Section 1318 without further conditions or subject
11 to a condition or conditions in accordance with Section 1275a.

12 (2) The fact that the court has not received the report required
13 under this section shall not preclude release pursuant to this
14 subdivision.

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

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

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

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

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

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

32 1269c. (a) If a defendant is arrested without a warrant for a
33 bailable felony offense or for the misdemeanor offense of violating
34 a domestic violence restraining order, and a peace officer has
35 reasonable cause to believe that the amount of bail set forth in the
36 schedule of bail for that offense is insufficient to ensure the
37 defendant's appearance or to ensure the protection of a victim, or
38 family member of a victim, of domestic violence, the peace officer
39 shall prepare a declaration under penalty of perjury setting forth
40 the facts and circumstances in support of his or her belief and file

1 it with a magistrate, as defined in Section 808, or his or her
2 commissioner, in the county in which the offense is alleged to have
3 been committed or having personal jurisdiction over the defendant,
4 requesting an order setting a higher bail. Except where the
5 defendant is charged with an offense listed in subdivision (a) of
6 Section 1270.1, the defendant, either personally or through his or
7 her attorney, friend, or family member, also may make application
8 to the magistrate for release on bail lower than that provided in
9 the schedule of bail or on his or her own recognizance. The
10 magistrate or commissioner to whom the application is made is
11 authorized to set bail in an amount that he or she deems sufficient
12 to ensure the defendant's appearance or to ensure the protection
13 of a victim, or family member of a victim, of domestic violence,
14 and to set bail on the terms and conditions that he or she, in his or
15 her discretion, deems appropriate, or he or she may authorize the
16 defendant's release on his or her own recognizance. If, after the
17 application is made, no order changing the amount of bail is issued
18 within eight hours after booking, the defendant shall be entitled
19 to be released on posting the amount of bail set forth in the
20 applicable bail schedule.

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

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

24 1269c. (a) If a defendant is arrested without a warrant for a
25 bailable felony offense or for the misdemeanor offense of violating
26 a domestic violence restraining order, and a peace officer has
27 reasonable cause to believe that release subject to a release
28 agreement under Section 1318 without further conditions is
29 insufficient to ensure the defendant's appearance or to ensure the
30 protection of a victim, or family member of a victim, of domestic
31 violence, the peace officer shall, no later than six hours after the
32 arrest, prepare a declaration under penalty of perjury setting forth
33 the facts and circumstances in support of his or her belief and file
34 it with a magistrate, as defined in Section 808, or his or her
35 commissioner, in the county in which the offense is alleged to have
36 been committed or having personal jurisdiction over the defendant,
37 requesting an order pursuant to subdivision (f) of Section 1269b
38 imposing a condition or conditions of release.

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

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

1 ~~1270. (a) Any person who has been arrested for, or charged~~
2 ~~with, an offense other than a capital offense may be released on~~
3 ~~his or her own recognizance by a court or magistrate who could~~
4 ~~release a defendant from custody upon the defendant giving bail,~~
5 ~~including a defendant arrested upon an out-of-county warrant. A~~
6 ~~defendant who is in custody and is arraigned on a complaint~~
7 ~~alleging an offense which is a misdemeanor, and a defendant who~~
8 ~~appears before a court or magistrate upon an out-of-county warrant~~
9 ~~arising out of a case involving only misdemeanors, shall be entitled~~
10 ~~to an own recognizance release unless the court makes a finding~~
11 ~~on the record, in accordance with Section 1275, that an own~~
12 ~~recognizance release will compromise public safety or will not~~
13 ~~reasonably assure the appearance of the defendant as required.~~
14 ~~Public safety shall be the primary consideration. If the court makes~~
15 ~~one of those findings, the court shall then set bail and specify the~~
16 ~~conditions, if any, whereunder the defendant shall be released.~~

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

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

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

22 ~~1270.1. (a) Except as provided in subdivision (e), before any~~
23 ~~person who is arrested for any of the following crimes may be~~
24 ~~released on bail in an amount that is either more or less than the~~
25 ~~amount contained in the schedule of bail for the offense, or may~~
26 ~~be released on his or her own recognizance, a hearing shall be held~~
27 ~~in open court before the magistrate or judge:~~

28 ~~(1) A serious felony, as defined in subdivision (c) of Section~~
29 ~~1192.7, or a violent felony, as defined in subdivision (c) of Section~~
30 ~~667.5, but not including a violation of subdivision (a) of Section~~
31 ~~460 (residential burglary).~~

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

35 ~~(3) A violation of paragraph (1) of subdivision (e) of Section~~
36 ~~243.~~

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

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

7 ~~(c) At the hearing, the court shall consider evidence of past court~~
8 ~~appearances of the detained person, the maximum potential~~
9 ~~sentence that could be imposed, and the danger that may be posed~~
10 ~~to other persons if the detained person is released. In making the~~
11 ~~determination whether to release the detained person on his or her~~
12 ~~own recognizance, the court shall consider the potential danger to~~
13 ~~other persons, including threats that have been made by the~~
14 ~~detained person and any past acts of violence. The court shall also~~
15 ~~consider any evidence offered by the detained person regarding~~
16 ~~his or her ties to the community and his or her ability to post bond.~~

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

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

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

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

33 ~~1270.2. (a) When a person is detained in custody on a criminal~~
34 ~~charge prior to conviction for want of bail, that person is entitled~~
35 ~~to an automatic review of the order fixing the amount of the bail~~
36 ~~by the judge or magistrate having jurisdiction of the offense. That~~
37 ~~review shall be held not later than five days from the time of the~~
38 ~~original order fixing the amount of bail on the original accusatory~~
39 ~~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

1 take into consideration the protection of the public, the seriousness
2 of the offense charged, the previous criminal record of the
3 defendant, the probability of his or her appearing at trial or at a
4 hearing of the case, and the presumption of innocence. The public
5 safety, the safety of the victim, and the probability of the accused
6 appearing in court as required shall be the primary considerations.

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

12 (3) It shall be the duty of the court to determine what condition
13 or conditions will ensure the safety of the community, secure the
14 defendant's appearance at trial or at a hearing of the case, and
15 facilitate pretrial release. If, pursuant to Section 1275b, the court
16 finds that no conditions will reasonably ensure the defendant's
17 appearance in court or at a hearing of the court and protect public
18 safety, the court shall issue an order with findings of fact and a
19 statement explaining what condition or conditions it considered
20 and why those conditions were inadequate.

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

24 (c) In making a pretrial release decision pursuant to Section
25 1275a, the judge or magistrate shall consider the pretrial services
26 agency's risk assessment, recommendations on conditions of
27 release, and the pretrial services report in accordance with Section
28 1318.3. If a judge or magistrate's release decision is not consistent
29 with the pretrial services program's risk assessment and
30 recommendations on conditions of release, the judge or magistrate
31 shall include in its order for release a statement of the reasons.

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

38 (e) If a person is arrested for a serious felony, the prosecutor
39 shall provide notice of the hearing required by Section 1275a or
40 1275b to the alleged victim or next of kin of the alleged victim of

1 the offense for which the person was arrested, pursuant to
2 paragraph (3) of subdivision (f) of Section 28 of Article I of the
3 California Constitution.

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

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

6 1275a. (a) Except as provided in subdivision (f) and Section
7 1275b, at the arraignment of a person who is in custody, the judge
8 or magistrate shall, after considering the pretrial services report
9 with recommendations for conditions of release and any relevant
10 information provided by the prosecuting attorney or the defendant,
11 order the pretrial release of the person subject to a release
12 agreement under Section 1318 without further conditions, unless
13 the judge or magistrate determines that the release will not
14 reasonably ensure the appearance of the person as required, the
15 safety of the victim, or public safety. If the judge or magistrate
16 releases the person subject to a release agreement under Section
17 1318 without further conditions, the reasons for that decision shall
18 be stated in the record and included in the court's minutes.

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

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

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

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

1 ~~(3) (A) If a person for whom any nonmonetary condition or~~
2 ~~combination of conditions is imposed has the financial ability to~~
3 ~~pay all or part of the costs associated with that condition or~~
4 ~~conditions, the court may order the defendant to pay a reasonable~~
5 ~~fee, which shall not exceed the actual cost of the condition or~~
6 ~~conditions. Inability to pay all or a portion of the costs shall not~~
7 ~~serve as grounds to impose more restrictive conditions.~~

8 ~~(B) In cases of fraud or embezzlement prohibited in Section~~
9 ~~186.11, the prosecutor may seek the remedies provided in that~~
10 ~~section to preserve property or assets in the control of the defendant~~
11 ~~or transferred by that person to a third party subsequent to the~~
12 ~~alleged commission of the crime.~~

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

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

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

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

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

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

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

9 ~~(2) If the defendant requests a pretrial risk assessment, the~~
10 ~~assessment and report shall be completed within 12 hours, and~~
11 ~~within 24 hours the defendant shall be considered for release~~
12 ~~pursuant to subdivisions (a), (b), and (c).~~

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

18 ~~(h) For purposes of this section, “least restrictive” means those~~
19 ~~release terms necessary to reasonably ensure the appearance of~~
20 ~~the specific person, the safety of the victim, and public safety, as~~
21 ~~determined by the court.~~

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

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

24 ~~1275b. (a) A prosecuting attorney may file a motion with the~~
25 ~~court at any time, including any time before or after a defendant’s~~
26 ~~release pursuant to Section 1269b, seeking the pretrial detention~~
27 ~~of the defendant in any of the following circumstances:~~

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

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

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

36 ~~(B) There is no condition or combination of conditions of pretrial~~
37 ~~release that would reasonably ensure the physical safety of another~~
38 ~~person or persons.~~

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

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

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

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

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

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

11 ~~(b) (1) If a motion for pretrial detention is filed pursuant to~~
12 ~~subdivision (a), a hearing shall be held before a magistrate or judge~~
13 ~~to determine whether to release the defendant pending trial unless~~
14 ~~the hearing is waived by the defendant, either directly or, if he or~~
15 ~~she is represented by counsel, through counsel. The defense~~
16 ~~attorney shall be given notice and a reasonable opportunity to be~~
17 ~~heard on the matter. If the defendant does not have counsel, the~~
18 ~~court shall appoint counsel. The hearing shall be held within 48~~
19 ~~hours after filing the motion unless waived by the defendant either~~
20 ~~directly or, if represented by counsel, through counsel.~~

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

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

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

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

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

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

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

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

13 ~~(1) The protection of the public.~~

14 ~~(2) The safety of the victim.~~

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

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

17 ~~(5) The previous criminal record of the defendant.~~

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

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

22 ~~(g) If, after considering any relevant evidence provided by the~~
23 ~~prosecuting attorney or the defendant, and if no condition or~~
24 ~~combination of conditions would reasonably ensure the safety of~~
25 ~~another person or persons from great bodily harm, the court shall~~
26 ~~order the person detained pending trial only if, pursuant to Section~~
27 ~~12 of Article 1 of the Constitution, the court finds that the~~
28 ~~defendant meets one of the following descriptions:~~

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

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

38 ~~(3) The defendant has been charged with a felony offense, the~~
39 ~~facts are evident or the presumption great, and the court finds based~~
40 ~~on clear and convincing evidence that the person has threatened~~

1 another with great bodily harm in the charged case and that there
2 is a substantial likelihood that the person would carry out the threat
3 if released.

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

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

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

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

17 1275.1. (a) Bail, pursuant to this chapter, shall not be accepted
18 unless a judge or magistrate finds that no portion of the
19 consideration, pledge, security, deposit, or indemnification paid,
20 given, made, or promised for its execution was feloniously
21 obtained.

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

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

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

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

39 (c) Once a magistrate or judge has determined that probable
40 cause exists, as provided in subdivision (b), a defendant bears the

1 burden by a preponderance of the evidence to show that no part
2 of any consideration, pledge, security, deposit, or indemnification
3 paid, given, made, or promised for its execution was obtained by
4 felonious means. Once a defendant has met such burden, the
5 magistrate or judge shall release the hold previously ordered and
6 the defendant shall be released under the authorized amount of
7 bail.

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

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

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

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

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

29 (i) The bail of any defendant found to have willfully misled the
30 court regarding the source of bail may be increased as a result of
31 the willful misrepresentation. The misrepresentation may be a
32 factor considered in any subsequent bail hearing.

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

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

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

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

9 1275.1. (a) Monetary bail, pursuant to this chapter, shall not
10 be accepted unless a judge or magistrate finds that no portion of
11 the consideration, pledge, security, deposit, or indemnification
12 paid, given, made, or promised for its execution was feloniously
13 obtained.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~1277. (a) When the defendant has been held to answer upon~~
2 ~~an examination for a public offense, the admission to bail may be~~
3 ~~by the magistrate by whom he or she is so held, or by any~~
4 ~~magistrate who has power to issue the writ of habeas corpus.~~

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

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

8 ~~1277. (a) When the defendant has been held to answer upon~~
9 ~~an examination for a public offense, pretrial release pursuant to~~
10 ~~Section 1275a or admission to bail may be by the magistrate by~~
11 ~~whom he or she is so held, or by any magistrate who has power~~
12 ~~to issue the writ of habeas corpus.~~

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

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

15 ~~1278. (a) Bail is put in by a written undertaking, executed by~~
16 ~~two sufficient sureties (with or without the defendant, in the~~
17 ~~discretion of the magistrate), and acknowledged before the court~~
18 ~~or magistrate, in substantially the following form:~~

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

39 ~~(b) Every undertaking of bail shall contain the bail agent license~~
40 ~~number of the owner of the bail agency issuing the undertaking~~

1 along with the name, address, and phone number of the agency,
2 regardless of whether the owner is an individual, partnership, or
3 corporation. The bail agency name on the undertaking shall be a
4 business name approved by the Insurance Commissioner for use
5 by the bail agency owner, and be so reflected in the public records
6 of the commissioner. The license number of the bail agent
7 appearing on the undertaking shall be in the same type size as the
8 name, address, and phone number of the agency.

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

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

12 1278. (a) (1) Upon a finding that monetary bail should be set
13 pursuant to subdivision (c) of Section 1275a, the defendant may
14 execute an unsecured appearance bond or a secured bond in the
15 amount specified by the court. The court may require, and the
16 defendant may request, that an unsecured appearance bond be
17 signed by uncompensated third parties.

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

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

27 An order having been made on the ____ day of ____, 20__, by
28 ____, a judge of the ____ Court of ____ County, that ____ be held
29 to answer upon a charge of (stating briefly the nature of the
30 offense), upon which he or she has been admitted to bail in the
31 sum of ____ dollars (\$ ____); we, ____ and ____, of ____ (stating
32 their place of residence and occupation), hereby undertake that the
33 above-named ____ will appear and answer any charge in any
34 accusatory pleading based upon the acts supporting the charge
35 above mentioned, in whatever court it may be prosecuted, and will
36 at all times hold himself or herself amenable to the orders and
37 process of the court, and if convicted, will appear for
38 pronouncement of judgment or grant of probation, or if he or she
39 fails to perform either of these conditions, that we will pay to the
40 people of the State of California the sum of ____ dollars (\$ ____)

1 (inserting the sum in which the defendant is admitted to bail). If
2 the forfeiture of this bond be ordered by the court, judgment may
3 be summarily made and entered forthwith against the said (naming
4 the sureties), and the defendant if he or she be a party to the bond,
5 for the amount of their respective undertakings herein, as provided
6 by Sections 1305 and 1306.

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

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

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

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

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

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

32 1284. (a) When the offense charged is not punishable with
33 death, the officer serving the bench warrant must, if required, take
34 the defendant before a magistrate in the county in which it is issued,
35 or in which he or she is arrested, for the purpose of a pretrial release
36 hearing. If the defendant appears before such magistrate without
37 the bench warrant having been served upon him or her, the
38 magistrate shall deliver him or her into the custody of the sheriff
39 for the purpose of immediate booking and the recording of
40 identification data, whereupon the sheriff shall deliver the

1 defendant back before the magistrate for the purpose of a pretrial
2 release hearing.

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

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

5 1288. ~~(a) The provisions contained in Sections 1279, 1280,~~
6 ~~1280a, and 1281, in relation to bail before indictment, apply to~~
7 ~~bail after indictment.~~

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

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

11 1289. ~~(a) After a defendant has been admitted to bail upon an~~
12 ~~indictment or information, the court in which the charge is pending~~
13 ~~may, upon good cause shown, either increase or reduce the amount~~
14 ~~of bail. If the amount be increased, the court may order the~~
15 ~~defendant to be committed to actual custody, unless he or she give~~
16 ~~bail in such increased amount. If application be made by the~~
17 ~~defendant for a reduction of the amount, notice of the application~~
18 ~~must be served upon the district attorney.~~

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

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

22 1289. ~~(a) After a defendant has been released from custody~~
23 ~~upon an indictment or information pursuant to Section 1275a, the~~
24 ~~court in which the charge is pending may, upon a change in~~
25 ~~circumstances, amend the release order to change the conditions~~
26 ~~of release, including the amount of any monetary bail. If, upon~~
27 ~~motion of the prosecuting attorney, the amount of monetary bail~~
28 ~~is increased, the court shall set bail in accordance with subdivision~~
29 ~~(c) of Section 1275a. If the defendant requests a change in the~~
30 ~~conditions of release, notice of the request shall be served upon~~
31 ~~the prosecuting attorney.~~

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

37 ~~(c)~~

38 ~~This section shall become operative on January 1, 2020.~~

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

1 ~~1295. (a) The defendant, or any other person, at any time after~~
2 ~~an order admitting the defendant to bail or after the arrest and~~
3 ~~booking of a defendant for having committed a misdemeanor,~~
4 ~~instead of giving bail may deposit, with the clerk of the court in~~
5 ~~which the defendant is held to answer or notified to appear for~~
6 ~~arraignment, the sum mentioned in the order or, if no order, in the~~
7 ~~schedule of bail previously fixed by the judges of the court, and,~~
8 ~~upon delivering to the officer in whose custody defendant is a~~
9 ~~certificate of the deposit, the defendant shall be discharged from~~
10 ~~custody.~~

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

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

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

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

21 ~~1295. (a) The defendant, at any time after an order admitting~~
22 ~~the defendant to bail pursuant to Section 1275a, instead of giving~~
23 ~~bail may deposit, with the clerk of the court in which the defendant~~
24 ~~is held to answer or notified to appear for arraignment, the sum~~
25 ~~mentioned in the order or a percentage of the sum mentioned in~~
26 ~~the order, not to exceed 10 percent, and, upon delivering to the~~
27 ~~officer in whose custody defendant is a certificate of the deposit,~~
28 ~~the defendant shall be discharged from custody.~~

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

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

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

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

38 ~~1318. (a) The defendant shall not be released from custody~~
39 ~~under an own recognizance until the defendant files with the clerk~~

1 of the court or other person authorized to accept bail a signed
2 release agreement which includes:

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

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

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

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

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

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

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

20 1318. (a) The defendant shall not be released from custody
21 under his or her own recognizance with no further conditions, or
22 released with a further condition or conditions, until the defendant
23 files with the clerk of the court or other person authorized to accept
24 bail a signed release agreement which includes:

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

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

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

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

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

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

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

1 ~~1318.1. (a) A court, with the concurrence of the board of~~
2 ~~supervisors, may employ an investigative staff for the purpose of~~
3 ~~recommending whether a defendant should be released on his or~~
4 ~~her own recognizance.~~

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

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

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

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

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

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

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

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

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

27 ~~1318.1. (a) Each county shall establish a pretrial services~~
28 ~~agency, which shall be responsible for gathering information about~~
29 ~~newly-arrested defendants, conducting risk assessments on pretrial~~
30 ~~defendants, preparing individually tailored recommendations to~~
31 ~~the court regarding release options and conditions, and providing~~
32 ~~pretrial services and supervision to defendants on pretrial release.~~
33 ~~Pretrial services agencies shall do all of the following:~~

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

37 ~~(2) Assist defendants on pretrial release in remaining free from~~
38 ~~custody and to employ the least restrictive interventions and~~
39 ~~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 the Judicial Council 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.~~

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

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

~~1318.2. (a) The Judicial Council shall do all of the following:~~

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

1 ~~(2) Adopt a Rule of Court regarding the imposition of pretrial~~
2 ~~release terms and conditions, including designation of risk levels~~
3 ~~or categories.~~

4 ~~(3) Train judges on the use of pretrial risk assessment~~
5 ~~information when making pretrial release and detention decisions,~~
6 ~~and on the imposition of pretrial release terms and conditions.~~

7 ~~(4) Compile and maintain in a list of validated pretrial risk~~
8 ~~assessment tools that are available in the public domain.~~

9 ~~(b) Courts shall provide, at a minimum, the following data to~~
10 ~~the Judicial Council at least two times per year as directed by the~~
11 ~~Judicial Council:~~

12 ~~(1) The number of individuals assessed using a pretrial risk~~
13 ~~assessment tool.~~

14 ~~(2) The number of individuals released on their own~~
15 ~~recognizance without further conditions.~~

16 ~~(3) The number of individuals released subject to further~~
17 ~~conditions.~~

18 ~~(4) The number of individuals detained pretrial.~~

19 ~~(5) The number of individuals released pretrial who fail to~~
20 ~~appear at a scheduled court appearance.~~

21 ~~(c) When possible, the courts shall provide the following data~~
22 ~~to the Judicial Council:~~

23 ~~(1) Demographic data of those released and detained, including~~
24 ~~race or ethnicity and gender.~~

25 ~~(2) Other data necessary to evaluate the effectiveness of pretrial~~
26 ~~programs as identified by the Judicial Council.~~

27 ~~(d) (1) The Judicial Council shall provide a biennial report to~~
28 ~~the Legislature that includes the information contained in paragraph~~
29 ~~(4) of subdivision (a) and subdivisions (b) and (c).~~

30 ~~(2) A report to be submitted pursuant to this subdivision shall~~
31 ~~be submitted in compliance with Section 9795 of the Government~~
32 ~~Code.~~

33 ~~(e) Each county's pretrial services agency, in coordination with~~
34 ~~the trial court and local law enforcement agencies shall provide~~
35 ~~data two times a year as directed by the Judicial Council regarding~~
36 ~~the following:~~

37 ~~(1) The number of individuals on pretrial release who are~~
38 ~~charged with a new crime while on pretrial release.~~

39 ~~(2) The number of individuals on pretrial release who are~~
40 ~~charged with a new violent crime while on pretrial release.~~

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

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

~~SEC. 38. 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) A pretrial risk assessment tool 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) Consistent with paragraph (3), it shall be regularly validated and adjusted, as appropriate, to ensure that the assessment 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.~~

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

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

9 ~~(7) It shall not require an in-person interview of an arrested~~
10 ~~person, however, the pretrial services agency may, if necessary~~
11 ~~and for administrative purposes only, ask the arrested person to~~
12 ~~identify a place of residence.~~

13 ~~(c) Each county shall select a validated risk assessment tool that~~
14 ~~meets the requirements of subdivision (b). The agency responsible~~
15 ~~for pretrial assessment shall make an annual report to the Judicial~~
16 ~~Council of California, demonstrating that the tool meets the~~
17 ~~requirements of subdivision (b).~~

18 ~~(d) Pursuant to Sections 1269b and 1275a, the pretrial services~~
19 ~~agency shall conduct a pretrial risk assessment using the pretrial~~
20 ~~risk assessment tool selected by the county pursuant to subdivision~~
21 ~~(c).~~

22 ~~(e) (1) The pretrial services agency shall prepare a pretrial~~
23 ~~services report following the administration of the pretrial risk~~
24 ~~assessment tool that contains the results of the pretrial risk~~
25 ~~assessment tool, the offense charged, and a recommendation for~~
26 ~~release under Section 1318 without further conditions or release~~
27 ~~subject to the least restrictive further condition or conditions that~~
28 ~~will reasonably ensure the arrested person's appearance in court~~
29 ~~as required and public safety.~~

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

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

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

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

4 ~~(h) Each county shall make publicly available its risk assessment~~
5 ~~tool guidelines, factors, weights, studies, data upon which~~
6 ~~validation studies rely, and information about how a risk~~
7 ~~assessment tool was renormed.~~

8 ~~(i) It is the intent of the Legislature in enacting this section to~~
9 ~~reduce racial, ethnic, and gender bias and disparate impact in~~
10 ~~pretrial release decisionmaking.~~

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

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

13 ~~1319. (a) No person arrested for a violent felony, as described~~
14 ~~in subdivision (c) of Section 667.5, may be released on his or her~~
15 ~~own recognizance until a hearing is held in open court before the~~
16 ~~magistrate or judge, and until the prosecuting attorney is given~~
17 ~~notice and a reasonable opportunity to be heard on the matter. In~~
18 ~~all cases, these provisions shall be implemented in a manner~~
19 ~~consistent with the defendant's right to be taken before a magistrate~~
20 ~~or judge without unreasonable delay pursuant to Section 825.~~

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

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

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

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

38 ~~(c) The judge or magistrate who, pursuant to this section, grants~~
39 ~~or denies release on a person's own recognizance, within the time~~
40 ~~period prescribed in Section 825, shall state the reasons for that~~

1 decision in the record. This statement shall be included in the
2 court's minutes. The report prepared by the investigative staff
3 pursuant to subdivision (b) of Section 1318.1 shall be placed in
4 the court file for that particular matter.

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

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

8 1319.5. (a) No person described in subdivision (b) who is
9 arrested for a new offense may be released on his or her own
10 recognizance until a hearing is held in open court before the
11 magistrate or judge.

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

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

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

20 (A) Any felony offense.

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

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

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

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

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

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

32 SEC. 41. If the Commission on State Mandates determines
33 that this act contains costs mandated by the state, reimbursement
34 to local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.