Administration of Justice Policy Committee

124th CSAC Annual Meeting
Thursday, November 29, 2018 · 9:00 a.m. – 10:30 a.m.
Marriott Marquis San Diego · Marina Ballroom E
333 West Harbor Drive · San Diego, California

Supervisor Alfredo Pedroza, Napa County, Chair
Supervisor Kelly Long, Ventura County, Vice Chair

9:00 a.m. I. **Welcome and Introductions**
Supervisor Alfredo Pedroza, Napa County, Chair
Supervisor Kelly Long, Ventura County, Vice Chair

9:05 a.m. II. **Bail Reform: What Does the Future Hold?**
After sitting for over a year, Senate Bill 10 (Hertzberg) was amended and quickly passed by the legislature at the end of the 2017/2018 legislative session. This legislation provides for the establishment of a new pretrial release system that includes pretrial assessment services provided by the court, unless the court contracts with the county to perform this function. This legislation has a delayed implementation date of October 1, 2019.

Shelley Curran, Director of Criminal Justice Services, Judicial Council of California

9:45 a.m. **Question and Answer**

10:15 a.m. III. **ACTION ITEM: CSAC 2018-19 Platform Update Process**
Jessica Devencenzi, Legislative Representative, CSAC
Stanicia Boatner, Legislative Analyst, CSAC

10:20 a.m. IV. **ACTION ITEM: Year in Review and Administration of Justice 2019 Priorities**
Supervisor Alfredo Pedroza, Napa County, Chair
Supervisor Kelly Long, Ventura County, Vice Chair
Jessica Devencenzi, CSAC Legislative Representative

10:30 a.m. V. **Adjournment**

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ATTACHMENTS

Bail Reform – What Does the Future Hold?

Attachment One ..... Senate Bill 10 (Hertzberg): Bail Reform

Attachment Two ..... SB 10 Pre arraignment without Court Review Infographic: Prepared by Judicial Council

Attachment Three ..... SB 10 Pre arraignment Infographic: Prepared by Judicial Council

Attachment Four ..... SB 10 General Overview, Updated September 20, 2018: Prepared by Department of Finance

Attachment Five ..... Summary of Release and Detention Process Under SB 10 (Bail Reform Legislation) Effective October 1, 2019

Administration of Justice Policy Platform Update

Attachment Six ..... Memo on Platform Update

Attachment Seven ..... AOJ Platform Draft

Administration of Justice Year in Review and 2019 Legislative Priorities

Attachment Eight ..... Memo on AOJ Year in Review and 2019 Legislative Priorities

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Bail Reform: What Does the Future Hold?

Attachment One

Senate Bill 10 (Hertzberg) - Bail Reform

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SB-10 Pretrial release or detention: pretrial services. (2017-2018)

Date Published: 08/28/2018 09:00 PM

Senate Bill No. 10

CHAPTER 244

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.

[Approved by Governor August 28, 2018. Filed with Secretary of State August 28, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 10, Hertzberg. 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 prearraignment 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. It is the intent of the Legislature by enacting this measure to permit preventive detention of pretrial defendants only in a manner that is consistent with the United States Constitution, as interpreted by the United States Supreme Court, and only to the extent permitted by the California Constitution as interpreted by the California courts of review.

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

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

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

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

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

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

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

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

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

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

(9) Making recommendations to the court, including, but not limited to, presentence investigative reports pursuant to Sections 1203.7 and 1203.10 of the Penal Code, or reports prepared 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 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.

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

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

(g) "Pretrial Assessment Services" means an entity, division, or program that is assigned the responsibility, pursuant to Section 1320.26, 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, and as directed under statute or rule of court, implement risk-based determinations regarding release and detention. The entity, division, or program, at the option of the particular superior court, may be employees of the court, or employees of a public entity contracting with the court for those services as provided in Section 1320.26, and may include an entity, division, or program from an adjoining county or one that provides services as a member of a regional consortium. In all circumstances persons acting on behalf of the entity, division, or program shall be officers of the court. "Pretrial Assessment Services" does not include supervision of persons released under this chapter.

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

(i) "Risk score" refers to a descriptive evaluation of a person's risk of failing to appear in court as required or the risk to public safety due to the commission of a new criminal offense if the person is released before adjudication of his or her current criminal offense, as a result of conducting an assessment with a validated risk assessment tool and may include a numerical value or terms such as "high," "medium," or "low" risk.

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

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

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

Article 2. Book and Release

1320.8. A person arrested or detained for a misdemeanor, other than a misdemeanor listed in subdivision (e) of Section 1320.10, may be booked and released without being taken into custody or, if taken into custody, shall be released from custody without a risk assessment by Pretrial Assessment Services within 12 hours of booking. This section shall apply to any person who has been arrested for a misdemeanor other than those offenses or factors listed in subdivision (e) of Section 1320.10, whether 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 a person as having a low risk to public safety and low risk of failure to appear in court, shall release a low-risk person on his or her own recognizance, prior to arraignment, without review by the court, and with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the person's return to court. This subdivision does not apply to a person booked and released under Section 1320.8 or a person who is ineligible for consideration for release prior to arraignment as set forth in subdivision (e).

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

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

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

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

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

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

(A) A violation of Section 273.5.

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

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

(D) A violation of Section 646.9.

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

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

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

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

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

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

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

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

(12) A person who has been convicted of 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, within the past five years.

(13) A person arrested with or without a warrant for 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.

(f) Review of the person's custody status and release pursuant to subdivision (b) or (c) shall occur without unnecessary delay, and no later than 24 hours of the person's booking. The 24-hour period may be extended for good cause, but shall not exceed an additional 12 hours.

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

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

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

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

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

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

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

Article 5. Prearraignment Review by Pretrial Assessment Services or the Court

1320.11. (a) A superior court, in consultation with Pretrial Assessment Services and other stakeholders, shall adopt a local rule of court consistent with the California Rules of Court adopted by the Judicial Council, as described in subdivision (a) of Section 1320.25, that sets forth review and release standards for Pretrial Assessment Services for persons assessed as medium risk and eligible for prearraignment release on own recognizance or supervised own recognizance. The local rule of court shall provide for the release or detention of medium-risk defendants, support an effective and efficient pretrial release or detention system that protects public safety and respects the due process rights of defendants. The local rule shall provide Pretrial Assessment Services with authority to detain or release on own recognizance or supervised own recognizance defendants assessed as medium risk, consistent with the standards for release or detention set forth in the rule. The local rule may further expand the list of offenses and factors for which prearraignment release of persons assessed as medium risk is not permitted but shall not provide for the exclusion of release of all medium-risk defendants by Pretrial Assessment Services. The authority of the local rule of court shall be limited to determinations made pursuant to subdivision (c) of Section 1320.10. On an annual basis, superior courts shall consider the impact of the rule on public safety, the due process rights of defendants, and the preceding year's implementation of the rule.

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

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

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

(1) Persons assessed as high risk.

(2) Persons 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.

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

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

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

(e) (1) If the court finds the person appropriate for prearraignment release, the arrested person shall be released on the person's own recognizance, or on supervised own recognizance, with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the arrested person's appearance in court as required.

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

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

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

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

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

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

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

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

(h) The court may decline to release a 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 as required.

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

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

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

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

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

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

Article 6. Release or Detention Determination at Arraignment

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

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

(b) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Upon the filing of a motion for preventive detention, the court shall make a determination regarding release or detention of the defendant pending the preventive detention hearing. When making the release or detention determination and ordering conditions of release pending the preventive detention hearing, the court shall consider the information provided by Pretrial Assessment Services, including recommendations on conditions of release and shall give significant weight to recommendations and assessment of Pretrial Assessment Services.

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

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

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

Article 7. Preventive Detention Hearing

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

(b) For good cause, the defense or the prosecution may seek a continuance of the preventive detention hearing. If a request for a continuance is granted, the continuance may not exceed three court days unless stipulated by the parties.

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

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

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

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

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

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

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

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

(A) The defendant was convicted of 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, within the past 5 years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Any proposed plan of supervision.

(g) If a defendant is released from custody following a preventive detention hearing, the court, in the document authorizing the defendant's release, shall notify the defendant of both of the following:

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

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

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

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

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

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

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

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

1320.23. (a) If the court issues an arrest warrant, or a bench warrant based upon a defendant's failure to appear in court as required, or upon allegations that the defendant has violated a condition of pretrial or postconviction supervision, the court may indicate on the face of the warrant whether, at the time the defendant is arrested on the warrant, the defendant should be booked and released, detained for an initial review, detained pending arraignment, or detained pending a hearing on the violation of supervision.

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

(c) The court's release or detention indication on the warrant shall be binding on the arresting and booking agency and the custody facility, but is not binding on any subsequent decision by a court or Pretrial Assessment

Services. The indication is, however, one factor that may be considered by Pretrial Assessment Services or the court when determining the person's custody status in subsequent proceedings.

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

Article 8. Administrative Responsibilities of the Judicial Council

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

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

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

(3) Prescribe standards for review, release, and detention by Pretrial Assessment Services and the court, that shall include a standard authorizing prearraignment detention if there is a substantial likelihood that no nonmonetary condition or combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the person as required.

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

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

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

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

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

(A) Subdivision (b) of Section 1320.10.

(B) Subdivision (c) of Section 1320.10.

(C) Section 1320.12, disaggregated by risk level.

(D) Section 1320.13, disaggregated by risk level.

(3) Detained at:

(A) Arraignment, disaggregated by risk level.

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

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

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

(B) Have charges filed for a new crime.

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

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

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

(1) Whether the court conducts prearraignment reviews pursuant to Section 1320.13.

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

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

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

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

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

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

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

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

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

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

1320.25. (a) The panel of experts and judicial officers as set forth in paragraph (7) of subdivision (e) of Section 1320.24 shall designate "low," "medium," and "high" risk levels based upon the scores or levels provided by the instrument for use by Pretrial Assessment Services in carrying out their responsibilities pursuant to Section 1320.9.

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

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

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

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

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

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

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

(g) On or before February 1, 2019, the presiding judge of the superior court and the chief probation officer of each county, or the director of the County of Santa Clara's Office of Pretrial Services for that county, shall submit to the Judicial Council a letter confirming their intent to contract for pretrial assessment services pursuant to this section.

(h) For the purposes of this section:

(1) "Pretrial Assessment Services" does not include supervision of persons released under this chapter.

(2) A "qualified local public agency" is one with experience in all of the following:

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

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

(C) Supervising offenders in the community.

(D) Employing peace officers.

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

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

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

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

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

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

(b) Upon appropriation by the Legislature, the Department of Finance shall allocate funds to local probation departments for pretrial supervision services. For the purposes of this subdivision, the County of Santa Clara's Office of Pretrial Services shall be eligible for funding within that county. In allocating the funds, the department shall consider regional variances in costs, pay scales, and other factors when making allocation determinations.

Allocations shall include a base portion to support pretrial supervision across the state, and an additional amount based at least in part on the county's population of adults between 18 and 50 years of age, and local arrest rates. The Department of Finance shall consult with the Judicial Council, the Chief Probation Officers of California, and key stakeholders, including representatives of employees, when adopting the annual allocation methodology.

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

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

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

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

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

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

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

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

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

1320.32. Commencing October 1, 2019, all references in this code to "bail" shall refer to the procedures specified in this chapter.

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

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

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

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

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

Bail Reform

Attachment Two

SB 10 Pre arraignment without Court Review Infographic: Prepared by Judicial Council

(http://www.courts.ca.gov/documents/sb10-infographic-prearraignment.pdf)

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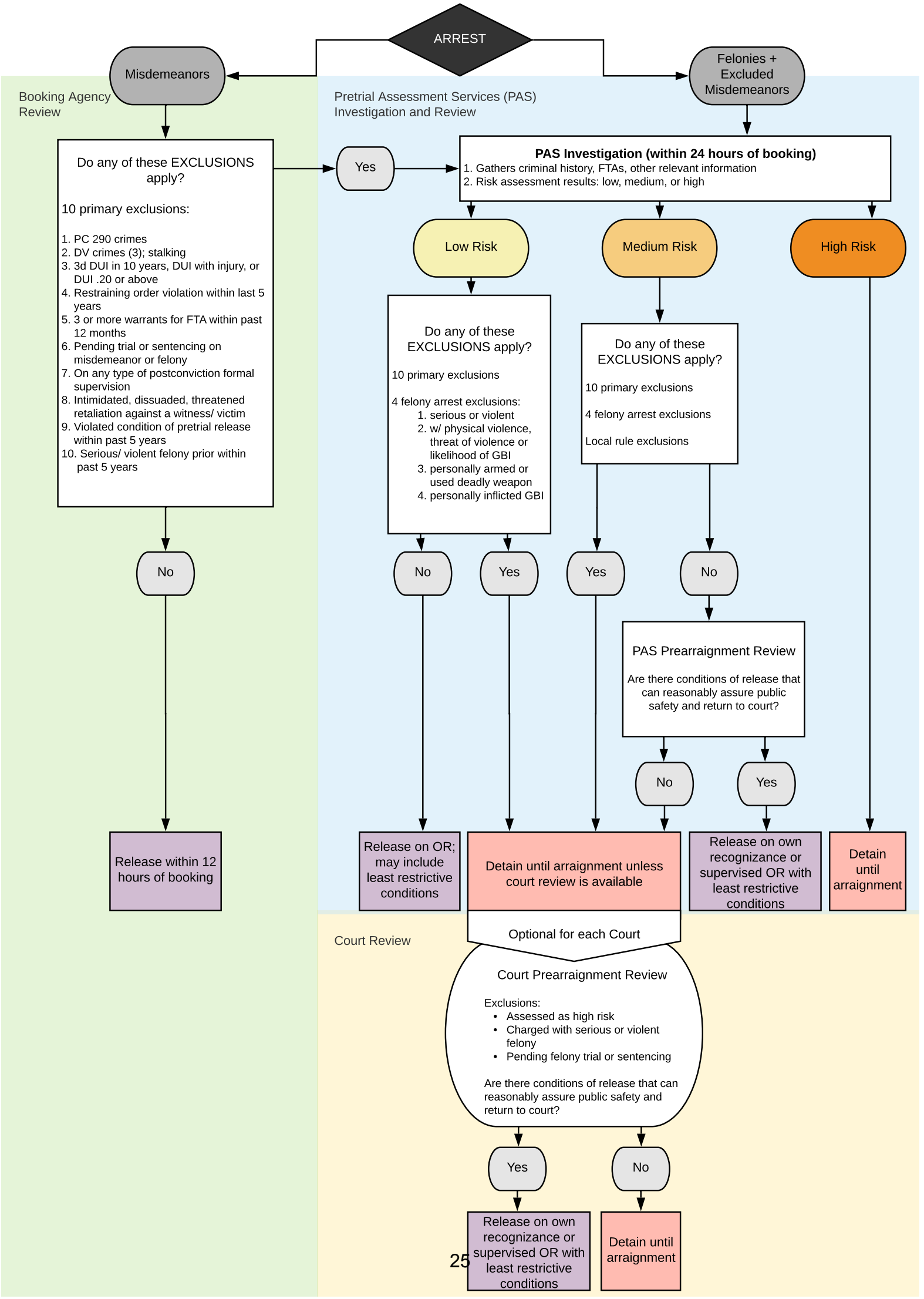
SB 10: PREARRAIGNMENT



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Bail Reform

Attachment Three

SB 10 Pre arraignment Infographic: Prepared by Judicial Council
(http://www.courts.ca.gov/documents/sb10-flowchart-prearraignment-process.pdf)

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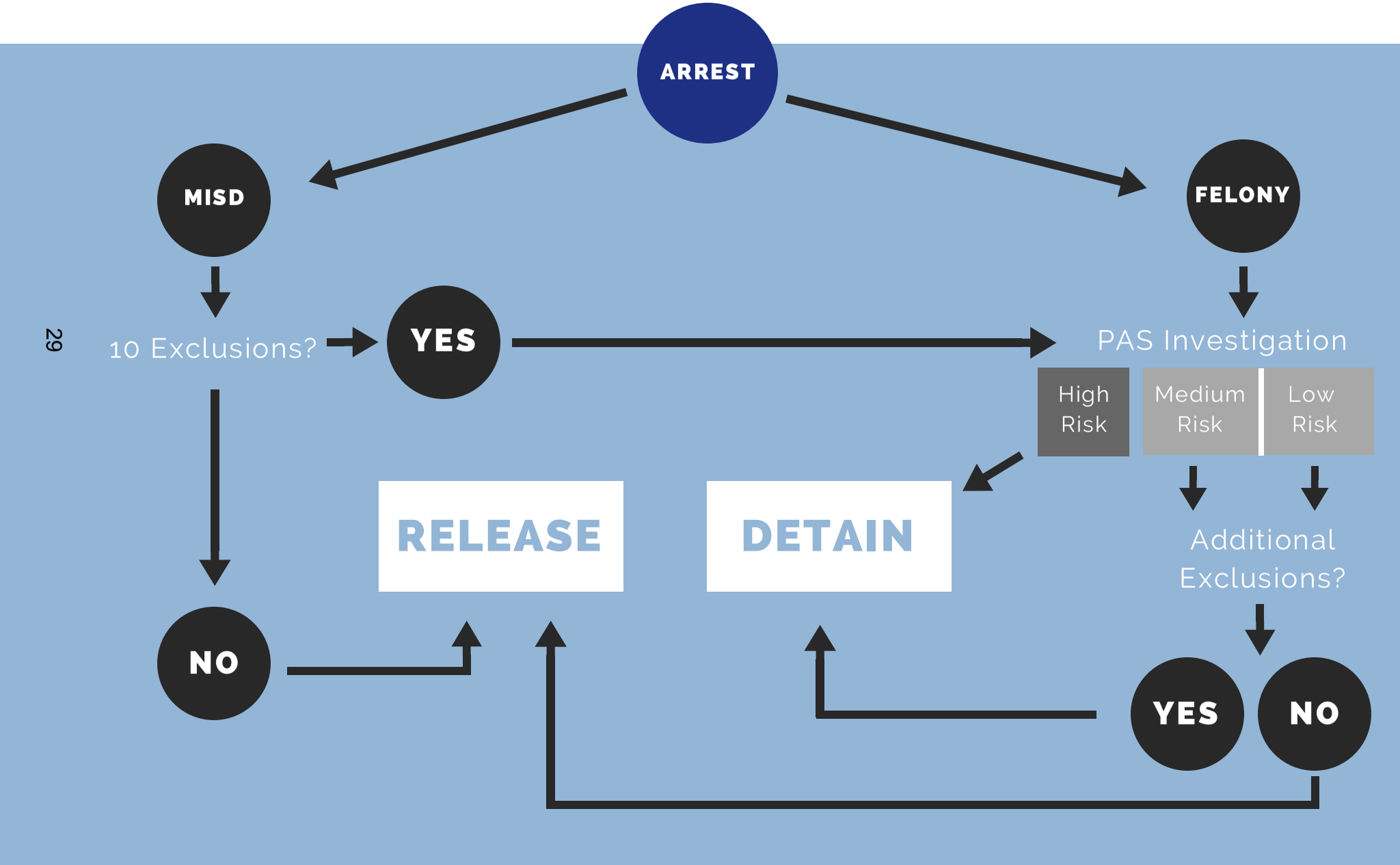
SB 10 PREARRAIGNMENT

WITHOUT COURT REVIEW



PAS Investigation

PAS investigates within 24 hours of booking

1. Gathers criminal history, failures to appear, other relevant information
2. Risk assessment results: low, medium, or high

10 Misdemeanor Exclusions

1. PC 290 crimes
2. DV crimes (3); stalking
3. 3d DUI in 10 yrs, DUI with injury, or DUI .20 or above
4. Restraining order violation within last 5 yrs
5. 3 or more warrants for FTA within past 12 months
6. Pending trial or sentencing on misdemeanor or felony
7. On any type of postconviction formal supervision
8. Intimidated, dissuaded, threatened retaliation against a witness/ victim
9. Violated condition of pretrial release within past 5 yrs
10. Serious/ violent felony prior within past 5 yrs

Low Risk

If low risk, released on OR (may include least restrictive conditions) unless the following exclusions apply:

- 10 misdemeanor exclusions
- 4 felony arrest exclusions
  1. Pending trial or sentencing in a felony matter
  2. Arrested for a felony with element of physical violence, threat of violence, or likelihood of GBI
  3. Arrested for a felony in which personally armed or personally used a deadly weapon or firearm
  4. Arrested for a felony in which personally inflicted GBI

If YES to any exclusions, then detained until arraignment

Medium Risk

If medium risk, released on OR or supervised OR with least restrictive conditions, unless PAS detains after review or the following exclusions apply:

- 10 misdemeanor exclusions
- 4 felony arrest exclusions
- Local rule exclusions

If YES to any exclusions, then detained until arraignment

Bail Reform

Attachment Four

SB 10 General Overview, Updated September 20, 2018: Prepared by Department of Finance

(http://www.courts.ca.gov/documents/sb10-overview.pdf)

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SB 10 General Overview, Updated November 8, 2018

This document was produced by the Department of Finance with input from Chief Probation Officers of California, the California State Sheriffs Association, the Judicial Council of California, the California District Attorneys Association and the Public Defenders of California.

SB 10 was signed into law on August 28, 2018 and goes into effect on October 1, 2019.

Release and Detention Process Summary

- SB 10 **does not** impact existing local practices regarding local law enforcement citing and booking decisions, the sheriff's existing release authority, or court-ordered population cap releases.
- Within 12 hours of booking, the booking agency, usually the Sheriff, will determine if the arrestee has any "disqualifying" conditions that make that person ineligible for release.
- Within 24 hours of booking, pretrial assessment services (PAS), most often housed within the county probation department, will assess all individuals who have not been released by the booking agency.
- Also within 24 hours of booking, PAS will conduct prearraignment reviews and inform the booking agency of eligible low and medium risk individuals who shall be released from county jail.
- PAS will provide risk assessment information and other supplemental information to the courts prior to arraignment.
- Courts may choose to provide for prearraignment review for additional low and medium risk defendants by judges or subordinate judicial officers prior to arraignment.
- At arraignment, judges will release all individuals who have not yet been released, including high risk individuals, unless the prosecution files a motion for preventive detention and a judge determines that the person should be detained until the preventive detention hearing.
- Judges may consider motions for preventive detention at any point in the pretrial process and may only order preventive detention until trial if the court finds by clear and convincing evidence that no combination of conditions will reasonably assure public safety or return to court.

Components of the Legislation

1. Eliminates money bail effective October 1, 2019.

2. Components of the Risk-Based System:

   a. The booking agency will release individuals arrested for misdemeanors (with some exceptions for domestic violence, stalking, and other serious factors) within 12 hours.

b. Courts will contract with pretrial assessment services (most often housed in probation departments) to conduct risk assessments using a validated risk assessment instrument.

c. Individuals who are assessed as low risk will be released on own recognizance within 24 hours of booking with exceptions for those arrested for crimes such as domestic violence, multiple DUI offenses, and other factors.

d. Based upon the parameters set forth in state and local rules of court, individuals who are assessed as medium risk (except for those arrested for crimes such as domestic violence, multiple DUIs, and other factors) will be released with monitoring or supervision that includes the least restrictive conditions to ensure public safety and return to court. Individuals who are assessed as high risk must be held until arraignment (within 48 hours of arrest).

e. If courts choose to provide for prearraignment review by judges or subordinate judicial officers, judicial officers may order the release of additional low and medium risk defendants prior to arraignment after receiving information from pretrial assessment services including the results of a risk assessment.

f. Pretrial supervision can include a range of conditions. For medium or high risk individuals, pretrial supervision could include check-in with pretrial supervision officers, GPS monitoring, drug testing, or other means of supervision.

g. Individuals who are detained pending arraignment, including those who are found to be high risk, will be released on supervised release following arraignment unless the prosecution makes a motion for a preventive detention hearing; the court will decide if those individuals may be detained until the preventive detention hearing is held.

h. The prosecution may make a motion for preventive detention at arraignment or any other point in the process only if:
    - The crime for which the person was arrested was committed with violence against a person, threatened violence or the likelihood of serious bodily injury; or one in which the person was personally armed with or personally used a deadly weapon or firearm in the commission of the crime, or personally inflicted great bodily injury in the commission of the crime.
    - At the time of arrest, the person was on any form of post-conviction supervision other than informal probation;
    - At the time of arrest, the person was pending trial or sentencing on another felony matter;
    - The arrested person intimidated or threatened retaliation against a witness or victim of the current crime;

- There is substantial reason to believe that no conditions will reasonably assure public safety or return to court.

i. Following a motion by the prosecution, decisions regarding detention must be made by judges at preventive detention hearings (which can be combined with arraignment). The preventive detention hearing must be held within 3 days. The defendant has a right to counsel and a right to testify. The victim must be notified and provided with an opportunity for input. Following the hearing, defendants may be detained until trial if the court finds by clear and convincing evidence that no combination of conditions will reasonably assure public safety or return to court

j. If the court issues an arrest or bench warrant based on the defendant's failure to appear in court or violations of conditions of supervision, the court will indicate on the warrant whether the defendant may be booked and released, or should be detained in custody until arraignment or the hearing on the violation of supervision.

3. Standards for Release and Detention

a. There is a presumption that a person will be released under the least restrictive nonmonetary conditions. Individuals cannot be required to pay for any supervision conditions that are imposed.

b. At the preventive detention hearing, there is a rebuttable presumption of detention if:
   - The current crime is a violent felony, or a felony offense committed with violence against a person, threatened violence, or with a likelihood of serious bodily injury, or one in which the person was personally armed with or personally used a deadly weapon or firearm in the commission of the crime, or personally inflicted great bodily injury in the commission of the crime; or
   - The person was assessed as high risk to public safety AND a) was convicted of a serious or violent felony within the last 5 years; b) the defendant is pending sentencing on a serious or violent crime; c) the person has intimidated, dissuaded, or threatened the victim with retaliation; or d) the person was on any form of post conviction supervision except informal probation.

c. Individuals can be detained pending trial only if detention is permitted under the US and CA Constitutions and if a judge finds by clear and convincing evidence that no condition or combination of conditions of pretrial supervision will reasonably assure public safety and/or the appearance of the persons as required.

4. Responsibilities of the Judicial Council (JCC) and Chief Justice

a. The JCC will adopt specific rules of court that prescribe the proper use of risk assessment information; describe the elements of validation associated with risk

assessment tools, including potential bias in tools; prescribe the standards for review, release, and detention including prearraignment detention; prescribe the parameters for a local rule of court that allows for the release of medium risk individuals by pretrial assessment services; and prescribe the imposition of conditions of pretrial release. The Judicial Council process for adopting rules includes the opportunity for public comment.

b. The JCC, in consultation with pretrial assessment services and other stakeholders, will compile and maintain a list of validated pretrial risk assessment tools.

c. The Chief Justice will convene a panel of experts to designate low, medium, and high risk levels based on scores provided by risk assessment tools.

d. The JCC will collect data annually on the implementation of the new law. The data will include information to compile the number of individuals who are assessed and detained, those released, and their outcomes during the pretrial period.

e. Upon appropriation by the Legislature, the JCC, after consultation with stakeholders including the Chief Probation Officers of California and representatives of public employees, will allocate funding to the trial courts for pretrial assessment services and judicial branch work associated with the implementation of the law. The allocation of all funding to the courts is done through an open process with the ability for the public to provide comment on the distribution.

5. Structure

a. Courts are responsible for establishing pretrial assessment services and county probation departments are the only existing local entities authorized to perform the duties associated with pretrial assessment services. The presiding judge and CPO (except in Santa Clara county where the court will contract with the Office of Pretrial Services, the only existing local entity other than county probation departments that is authorized to provide pretrial assessment services under the statute) shall submit a letter of intent to contract for providing pretrial assessment services by February 1, 2019.

b. Courts are prohibited from contracting with a local entity that has primary responsibility for arrests or detentions.

c. County probation departments will receive funding for providing supervision of pretrial defendants. Local entities are only eligible to receive this funding if they contract with the courts to provide assessment services.

d. Pretrial assessment services must be provided by public employees.

6. Funding

a. The Department of Finance, with input from the Judicial Council and the Chief Probation Officers of California, will estimate the funding needed to implement the law and include these estimates in the Governor's January Budget proposal.

b. Courts will receive funding for pretrial assessment services. Upon appropriation by the Legislature, the Judicial Council, with input from stakeholders including the Chief Probation Officers of California, shall allocate the funding to trial courts for pretrial assessment services. All funds shall be passed through to the entity providing pretrial assessment services.

c. Probation departments will receive funding from the state for supervision of individuals who are released pretrial. Upon appropriation by the Legislature, the Department of Finance will allocate funds to probation departments to supervise defendants who are released pretrial. Local entities are eligible for these funds only if they contract with the courts to provide pretrial assessment services.

d. The Judicial Branch (Judicial Council and trial courts) will receive additional funding to carry out its responsibilities associated with the Act. Funding will be provided to the trial courts to reflect costs associated with additional hearings, other trial court workload, and other administrative costs associated with carrying out the responsibilities set forth in the law.

e. The Legislature will allocate funding for the Board of State and Community Corrections to contract with an outside entity to evaluate the Act, and in particular, the impact by race, gender, ethnicity, and income level.

SB 1054 was passed by the legislature and signed by the Governor on September 30.

SB 1054 expands the SB 10 release prohibitions to include persons arrested for an offense listed in Penal Code Section 290.

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Bail Reform: What Does the Future Hold?

Attachment Five

Summary of Release and Detention Process Under SB 10 (Bail Reform Legislation) Effective October 1, 2019

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SUMMARY OF RELEASE AND DETENTION PROCESS UNDER SB 10 (BAIL REFORM LEGISLATION) Effective October 1, 2019

BOOK AND RELEASE—MISDEMEANORS - § 1320.8	
Release	Persons arrested for misdemeanors, with or without a warrant, either won't be booked or if booked, will be released within 12 hours – Exceptions per § 1320.10(e)
Exceptions to release or booking and release § 1320.10(e)	Persons arrested for following misdemeanors or crimes with any of following factors are not eligible for release or booking and release: • A person arrested for a registerable sex offense [See SB 1054] • Domestic violence (§§ 273.5, 243(e)(1); violation of DV protective order with threats, violence, or gone to residence or workplace (§ 273.6), and stalking (§ 646.9) • 3d DUI within 10 years, DUI with injury, or DUI of .20 or above • Restraining order violation within last 5 yrs • 3 or more warrants for FTA within past 12 mo • Pending trial or sentencing on misdemeanor or felony • On any type of postconviction supervision when arrested, other than informal • Intimidated, dissuaded, threatened retaliation against a witness/victim • Violated a condition of pretrial release within past 5 yrs • Convicted of a serious/violent felony within past 5 yrs
INVESTIGATION BY PRETRIAL ASSESSMENT SERVICES (PAS) - § 1320.9	
Timing	Prior to prearraignment review for eligible arrestees (within 24 hrs); prior to arraignment for all others; not required for arrestees who are booked and released
Information PAS is required to obtain	• Results of risk assessment using a validated risk assessment instrument, including risk level of "low," "medium" or "high" risk • Criminal charge for arrest, criminal history, including history of failure to appear in court as required within past 3 years • Any supplemental information reasonably available that directly addresses risk to public safety or risk of failure to appear
Report	• Contents: information PAS is required to obtain and information from district attorney's reasonable effort to contact the victim • Must include any recommendations for conditions of release (based on options in Rule of Court) • Copy of report must be served on the court and counsel • Report, including the results of risk assessment, cannot be used for any purpose other than as information to inform pretrial release/detention determination
PREARRAIGNMENT REVIEW - §§ 1320.10, 1320.13	
Decisionmaker	• PAS must conduct review of eligible arrestees assessed as low and medium risk (exceptions noted below) • At court's option, court may conduct prearraignment review of low and medium risk arrestees who are ineligible for review by PAS • Court may authorize subordinate judicial officer to conduct prearraignment reviews
Timing § 12320.10(f)	Eligible arrestees must receive prearraignment review without unnecessary delay and *within 24 hrs of booking*; time for review may be extended for good cause but must not exceed an additional 12 hrs.
Mandatory local rule	• Court, in consultation with stakeholders and consistent with Rule of Court, must adopt rule setting standards for review and release of medium risk arrestees by PAS

SUMMARY OF RELEASE AND DETENTION PROCESS UNDER SB 10 (BAIL REFORM LEGISLATION) Effective October 1, 2019

§ 1320.11	• Local rule may expand list of factors for which prearraignment release by PAS is not permitted, but must not exclude all medium risk arrestees from release by PAS • Courts must annually consider impact of rule on public safety, due process rights of defendant, and preceding year's implementation of the rule
Conditions of release	• Signed OR release agreement must include minimum conditions • Conditions of release must be the least restrictive to reasonably assure public safety and return to court • Persons released on OR or supervised OR shall not be required to pay for any conditions imposed by PAS or court
Prearraignment Review by PAS - § 1320.10	

NOT ELIGIBLE for prearraignment review or release by PAS § 1320.10(e)	The following persons arrested for a felony or misdemeanor are not eligible for prearraignment review by PAS:
	• Persons excluded by local rule from PAS prearraignment review
	• Persons arrested for any crimes or crimes with factors listed in § 1320.10(e):
	  • A person arrested for a registerable sex offense [See SB 1054]
	  • Domestic violence (§§ 273.5, 243(e)(1); violation of DV protective order with threats, violence, or gone to residence or workplace (§ 273.6), and stalking (§ 646.9)
	  • 3d DUI within 10 years, DUI with injury, or DUI of .20 or above
	  • Restraining order violation within last 5 yrs
	  • 3 or more warrants for FTA within past 12 mo
	  • Pending trial or sentencing on misdemeanor or felony
	  • On any type of postconviction supervision when arrested, other than informal
	  • Intimidated, dissuaded, threatened retaliation against a witness/victim
	  • Violated a condition of pretrial release within past 5 yrs
	  • Convicted of a serious/violent felony within past 5 yrs
	  • Persons assessed as **high risk**
	  • Persons arrested for a felony that includes physical violence to a person or threat of such violence, likelihood of great bodily injury, or where personally armed with or used a deadly weapon or personally inflicted great bodily injury in committing the crime
	  • People arrested for a serious or violent felony

PAS release of LOW RISK arrestees § 1320.10(b)	PAS must release persons assessed as low risk on OWN RECOGNIZANCE, prior to arraignment, without review by the court, and with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and return to court (LRNMC).
PAS release of MEDIUM RISK arrestees § 1320.10(c) **§ 1320.10(h)**	• PAS must release arrestees assessed as medium risk consistent with standards set in local rule • PAS must release eligible arrestees on OR or SUPERVISED OR, prior to arraignment, without review by the court, and with LRNMC • Persons not released are detained pending arraignment unless the court conducts a prearraignment review
Prearraignment Review by Court - § 1320.13	

SUMMARY OF RELEASE AND DETENTION PROCESS UNDER SB 10 (BAIL REFORM LEGISLATION) Effective October 1, 2019

Court release of LOW and MEDIUM RISK arrestees
 	
§ 1320.13(c)
§ 1320.13(h)
 	
§ 1320.13(i)
	• Court has the option to authorize a judge/SJO to conduct prearraignment reviews
	• Except for the persons ineligible for prearraignment review (see below), the court may conduct reviews of:
	  • Persons ineligible for review by PAS per § 1320.10(e)
	  • Medium risk persons excluded by local rule
	• Court must give "significant weight" to PAS information and options for release, and either release on OR, on SUPERVISED OR with LRNMC, or detain until arraignment
	• Court may detain arrestee until arraignment if there is a *substantial likelihood* that no condition of supervision will reasonably assure public safety or return to court
	• There is a presumption of detention if:
	  • The crime was committed with violence to a person or threat of such violence, likelihood of great bodily injury, or where personally armed with or used a deadly weapon, or personally inflicted great bodily injury
	  • At the time of arrest the person was on any form of postconviction supervision, except informal probation
	  • The person threatened, dissuaded a witness or victim
	  • The person is currently on pretrial release and has violated a condition of release

NOT ELIGIBLE for prearraignment review or release by court **§ 1320.13(b)**	• Persons assessed as **high risk** • Persons arrested for a serious or violent felony • Persons who were pending trial or sentencing in a felony matter when arrested
Modification of conditions **§ 1320.14**	• For good cause, the court may at any time on its own motion or upon request of any party, modify the conditions of release
ARRAIGNMENT - §§ 1320.15 – 1320.17	
Release by court **§ 1320.17** **§ 1320.16**	• The court must order release on OR or SUPERVISED OR with the LRNMC unless the prosecutor files a motion to detain ("Request for Preventive Detention") • Victims must be given notice of the arraignment by the prosecution and have an opportunity to be heard
REQUEST FOR PREVENTIVE DETENTION PENDING TRIAL - § 1320.18	
Motion for detention **1320.18(a)**	• Prosecution may file a motion for preventive detention at arraignment or at any time • The court is not authorized to initiate a preventive detention hearing on its own motion

The request for detention must be based on specified factors
§ 1320.18(a)
	• The request for detention must be based on at least one of the following circumstances:
	  • Crime was committed with violence against a person, threatened violence or the likelihood of serious injury, involved the personal arming or use of a deadly weapon, or personal infliction of great bodily injury
	  • Person was on postconviction supervision other than informal probation
	  • Person was pending trial or sentencing on a felony matter
	  • Person intimidated or threatened retaliation against a witness or victim of the current crime

SUMMARY OF RELEASE AND DETENTION PROCESS UNDER SB 10 (BAIL REFORM LEGISLATION) Effective October 1, 2019

	• There is substantial reason to believe that no nonmonetary condition or combination of conditions of pretrial supervision will reasonably assure protection of the public or a victim, or appearance of the defendant in court
Detention pending preventive detention hearing **§ 1320.18(c)** **§ 1320.18(d)** **§ 1320.18(e)**	• Court must determine whether to release or detain the person pending hearing based on information provided by PAS, including recommendations for conditions of release • The court shall give "significant weight to the recommendations and assessment" by PAS • Court may detain pending hearing only if it determines that no nonmonetary condition or combination of conditions of pretrial supervision will reasonably assure public safety or appearance in court as required • Court must state reasons for detention pending hearing on the record • If there is insufficient basis for detention, the court must release on the LRNMC
PREVENTIVE DETENTION HEARING - §§ 1320.19 – 1320.21	
Timing **§ 1320.19(a)** **§ 1320.19(b)** **§ 1320.19(c)** **§ 1320.19(e)**	• Hearing must be held within 3 court days of arraignment if the defendant is in custody, or within 5 court days if not in custody • Continuances for up to 3 court days are permitted for good cause, unless both sides stipulate to a longer continuance • The hearing must be conducted in a single session, unless a personal waiver by the defendant • If requested, the victim must be given notice of the hearing by the DA and an opportunity to be heard re custody status
Probable cause requirement for charged crime **§ 1320.20(b)**	If there is no information, indictment, holding order, or preliminary hearing waiver, and defendant challenges sufficiency of the evidence of the crime, the prosecution must establish probable cause that the defendant committed the charged crime
Type of evidence permitted **§ 1320.20(c)**	Evidence regarding detention status or probable cause the defendant committed the charged crime may be presented via reliable hearsay, written or oral statements of the victim, statements of the defendant, offers of proof, and argument of counsel
Rebuttable presumption of detention **§ 1320.20(a)**	There is a rebuttable presumption of detention pending trial if the court finds by probable cause that: • The current crime is a violent felony or felony committed with violence, threatened violence or likelihood of serious bodily injury, or defendant was personally armed with or used a weapon, or personally inflicted great bodily injury; or • Defendant was assessed as "high risk" to the safety of the public or victim AND one of the following: o Was convicted of a serious or violent felony within the past 5 years o Committed the current crime while pending sentencing for a violent crime o Intimidated or threatened retaliation against a witness or victim of current crime o When arrested, was on formal postconviction supervision
Standard for determination of preventive	Court may order preventive detention of defendant pending trial **only if**: • Detention is permitted under the United States and California Constitutions

SUMMARY OF RELEASE AND DETENTION PROCESS UNDER SB 10 (BAIL REFORM LEGISLATION) Effective October 1, 2019

detention pending trial **§ 1320.20(d)(1)** **§ 1320.20(d)(2)** **§ 1320.20(d)(3)**	• Court determines ***by clear and convincing evidence*** that no nonmonetary condition or combination of conditions of pretrial supervision will reasonably assure the public safety or the appearance of the defendant in court as required • Court must state the reasons for ordering preventive detention on the record • If requested a transcript must be prepared within two days of the request • If the decision is challenged by writ, "the court of appeal shall expeditiously consider that writ."
Release pending trial **§ 1320.20(e)**	• If court determines there is not a sufficient basis for detaining the defendant, the court shall release the defendant on OR or on SUPERVISED OR with LRNMC • Defendants released on supervised OR shall not be required to pay for any conditions imposed by the court
Factors for determining whether supervision conditions can reasonably assure public safety and appearance **§ 1320.20(f)**	Court may consider: • Nature and circumstances of the crime charged • Weight of the evidence against the defendant • Defendant's past conduct, family and community ties, and record of appearances • Whether defendant is on supervised release, probation or parole • Nature and seriousness of the risk to public safety • Recommendation of PAS • Impact of detention on the defendant's family • Any proposed plan of supervision.
Reopening preventive detention hearing **§ 1320.21**	• The parties or the court on its own motion, may reopen a detention hearing or request a new hearing upon a showing of newly discovered evidence, facts, or a material change in circumstances • The motion must state evidence or circumstances not known at time of hearing or circumstances warranting new hearing, and address whether there are conditions of release that will protect the public and assure appearance • Upon request, victim must be given notice of reopened hearing and opportunity to be heard • Court may grant motion on good cause and redetermine custody status • All of the procedures applicable to an original detention hearing are applicable to the reopened or new hearing
ARREST OR BENCH WARRANT	
Application for arrest warrant **§ 1320.22**	Court may issue arrest warrant upon ex parte application showing that the defendant has violated a condition of release imposed by the court; the custody status of the defendant will be determined in accordance with this chapter
Court indication of custody status on warrant **§ 1320.23**	• If court issues an arrest warrant, or a bench warrant based upon defendant's failure to appear or allegation that the defendant violated a condition of pretrial or postconviction supervision, the court may indicate on the warrant whether defendant should be: o booked and released o detained for prearraignment review o detained pending arraignment o detained pending hearing on the violation of supervision

	• Court's indication on warrant is binding on the arresting/booking agency and custody facility but not on any subsequent decision by PAS or the court • If the prosecution or law enforcement requests a warrant with a custody status other than book and release, that agency must provide the court with factors justifying a higher level of supervision or detention • If the court issues a misdemeanor warrant, determination of release must begin with book and release procedures (§ 1320.08); determination of release on felony warrants must start with prearraignment review (§ 1320.9)

Administration of Justice Policy Platform Update

Attachment Six

Memo: AOJ Platform Update

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November 14, 2018

To: Administration of Justice Policy Committee Members

From: Jessica Devencenzi, Legislative Representative
Stanicia Boatner, Legislative Analyst

Re: Administration of Justice Platform Review – ACTION ITEM

Recommendation. Staff recommends that the Administration of Justice Policy Committee approve the recommended changes to the California State Association of Counties (CSAC) policy platform as drafted and forward to the CSAC Board of Directors.

Background. The California County Platform is a statement of basic policies on issues of concern and interest to California's counties. CSAC's policy committees and Board of Directors review the platform regularly, amending and updating when necessary. In addition, the CSAC policy committees recommend updates to their relevant platform chapters every two years, with action taken at the Annual Meeting by the respective committee and Board of Directors.

As part of this biannual process, the Administration of Justice staff in late October recommended a few changes to the AOJ platform chapter and invited committee members to provide additional suggestions. There were additional recommendations made and those changes are reflected in the summary below.

Summary of Platform Changes:

Chapter 2 – Administration of Justice

Section 2: Legislative and Executive Matters: General Principles for Local Corrections

- Addition of data collection language.
- Modification to bail language to help ensure maximum local flexibility.
- Change alcohol and drug treatment services to alcohol and substance use disorder treatment.

Section 4: Judicial Branch Matters

- Change alcohol and drug treatment services to alcohol and substance use disorder treatment.

Section 5: Family Violence

- Addition of a statement that family violence disproportionately impacts disadvantaged communities.

Action Requested. Staff requests approval from the committee to advance the proposed changes to the CSAC Board of Directors.

Attachment. Marked up copy of the following platform chapter to illustrate the proposed changes:

Contacts. Please contact Jessica Devencenzi (jdevencenzi@counties.org or 916/650-8131), or Stanicia Boatner (sboatner@counties.org or 916/650-8116) for additional information.

Administration of Justice Policy Platform Update

Attachment Seven

AOJ Platform Draft

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Chapter Two

Administration of Justice

Section 1: General Principles

This chapter is intended to provide a policy framework to direct needed and inevitable change in our justice system without compromising our commitment to both public protection and the preservation of individual rights. CSAC supports improving the efficiency and effectiveness of the California justice systems without compromising the quality of justice.

The Role of Counties

The unit of local government that is responsible for the administration of the justice system must be close enough to the people to allow direct contact, but large enough to achieve economies of scale. While acknowledging that the state has a constitutional responsibility to enact laws and set standards, California counties are uniquely suited to continue to have major responsibilities in the administration of justice. However, the state must recognize differences arising from variations in population, geography, industry, and other demographics and permit responses to statewide problems to be tailored to the needs of individual counties.

We believe that delegation of the responsibility to provide a justice system is meaningless without provision of adequate sources of funding.

Section 2: Legislative and Executive Matters

Board of Supervisors Responsibilities

It is recognized that the state, and not the counties, is responsible for trial court operations costs and any growth in those costs in the future. Nevertheless, counties continue to be responsible for justice-related services, such as, but not limited to, probation, prosecutorial and defense services, as well as the provision of local juvenile and adult detention facilities. Therefore, county board of supervisors should have budget control over all executive and administrative elements of local justice programs for which we continue to have primary responsibility.

Law Enforcement Services

While continuing to provide the full range of police services, county sheriffs should move in the direction of providing less costly specialized services, which can most effectively be managed on a countywide basis. Cities should provide for patrol and emergency services within their limits or spheres of influence. However, where deemed mutually beneficial to counties and cities, it may be appropriate to establish contractual arrangements whereby a county would provide law enforcement services within incorporated areas. Counties should maintain maximum flexibility in their ability to contract with municipalities to provide public safety services.

District Attorney Services

The independent, locally-elected nature of the district attorney must be protected. This office must have the capability and authority to review suspected violations of law and bring its conclusions to the proper court.

Victim Indemnification

Government should be responsive to the needs of victims. Victim indemnification should be a state responsibility, and the state should adopt a program to facilitate receipt of available funds by victims, wherever possible, from the perpetrators of the crime who have a present or future ability to pay, through means that may include, but are not limited to, long-term liens of property and/or long-term payment schedules.

Witness Assistance

Witnesses should be encouraged to become more involved in the justice system by reporting crime, cooperating with law enforcement, and participating in the judicial process. A cooperative anonymous witness program funded jointly by local government and the state should be encouraged, where appropriate, in local areas.

Grand Juries

Every grand jury should continue to have the authority to report on the needs of county offices, but no such office should be investigated more than once in any two-year period, unless unusual circumstances exist. Grand juries should be authorized to investigate all local government agencies, not just counties. Local government agencies should have input into grand jury reports on non-criminal matters prior to public release. County officials should have the ability to call the grand jury foreman and his or her representative before the board of supervisors, for the purpose of gaining clarification on any matter contained in a final grand jury report. Counties and courts should work together to ensure that grand jurors are properly trained and that the jury is provided with an adequate facility within the resources of the county and the court.

Public Defense Services

Adequate legal representation must be provided for indigent persons as required by constitutional, statutory, and case law. Such representation includes both criminal and mental health conservatorship proceedings. The mechanism for meeting this responsibility should be left to the discretion of individual counties.

Counsel should be appointed for indigent juveniles involved in serious offenses and child dependency procedures. The court-appointed or -selected attorney in these procedures should be trained specifically to work with juveniles.

Adult defendants and parents of represented juveniles who have a present and/or future ability to pay part of the costs of defense should continue to be required to do so as determined by the court. The establishment of procedures to place the responsibility for the cost of juvenile defense rightfully upon the parents should be encouraged. The state should increase its participation in sharing the costs of public defense services.

Coroner Services

The independent and investigative function of the coroner must be assured. State policy should encourage the application of competent pathological techniques in the determination of the cause of death.

The decision as to whether this responsibility should be fulfilled by an independent coroner, sheriff-coroner combination, or a medical examiner must be left to the individual boards of supervisors. In rural counties, the use of contract medical examiners shall be encouraged on a case-by-case basis where local coroner judgment is likely to be challenged in court. A list of expert and highly qualified medical examiners, where available, should be circulated to local sheriff-coroners.

Pre-Sentence Detention

Adults

1) Facility Standards

The state's responsibility to adopt reasonable, humane, and constitutional standards for local detention facilities must be acknowledged.

Recognizing that adequate standards are dynamic and subject to constant review, local governments must be assured of an opportunity to participate in the development and modification of standards.

It must be recognized that the cost of upgrading detention facilities presents a nearly insurmountable financial burden to most counties. Consequently, enforcement of minimum standards must depend upon state financial assistance, and local costs can be further mitigated by shared architectural plans and design.

2) Pre-sentence Release

Counties' discretion to utilize the least restrictive alternatives to pre-sentence incarceration that are acceptable, in light of legal requirements and counties' responsibility to protect the public, should be unfettered.

3) Bail

We support a bail system that would validate the release of pre-sentence persons using risk assessment tools as a criteria for release. Risk assessment tools and pre-trial release assessments should be designed to mitigate racial and economic disparities while maintaining public safety. ~~We also believe that public protection should be a criterion considered when setting bail~~.

Any continuing county responsibility in the administration or operation of the bail system must include: 1) a mechanism to finance the costs of such a system and 2) provide counties with adequate local flexibility.

Juveniles

1) General

We view the juvenile justice system as being caught between changing societal attitudes calling for harsher treatment of serious offenders and its traditional orientation toward assistance and rehabilitation. Therefore, we believe a thorough

review of state juvenile laws is necessary. Any changes to the juvenile justice system should fully involve and draw upon the experience of county officials and personnel responsible for the administration of the present system. CSAC must be involved in state-level discussions and decision-making processes regarding changes to the juvenile justice system that will have a local impact. There must also be recognition that changes do not take place overnight and that an incremental approach to change may be most appropriate.

Counties must be given the opportunity to analyze the impact, assess the feasibility, and determine the acceptability of any juvenile justice proposal that would realign services from the state to the local level. As with any realignment, responsibility and authority must be connected, and sufficient resources — with a built-in growth factor adjustment — must be provided. Any shift in juvenile detention or incarceration from large state-run facilities to local facilities — if determined to be appropriate — must be pre-planned and funded by the state. However, counties believe that a class of juvenile offenders exists that is best treated by the state. These juvenile offenders are primarily those offenders whose behavioral problems, treatment needs, or criminogenic profile are so severe as to outstrip the local ability to properly treat.

We support a juvenile justice system that is adapted to local circumstances and increased state and federal funding support for local programs that are effective.

2) Facility Standards
The state's responsibility to adopt reasonable, humane, and constitutional standards for juvenile detention facilities is recognized. The adoption of any standards should include an opportunity for local government to participate. The state must recognize that local government requires financial assistance in order to effectively implement state standards, particularly in light of the need for separating less serious offenders from more serious offenders.

3) Treatment and Rehabilitation
As with adult defendants, counties should have broad discretion in developing programs for juveniles.

To reduce overcrowding of juvenile institutions and to improve the chances for treatment and rehabilitation of more serious offenders, it is necessary that lesser offenders be diverted from the formal juvenile justice system to their families and appropriate community-based programs. Each juvenile should receive individual consideration and, where feasible, a risk assessment.

Counties should pursue efficiency measures that enable better use of resources and should pursue additional funding from federal, state, and private sources to establish appropriate programs at the county level.

Prevention and diversion programs should be developed by each county or regionally to meet the local needs and circumstances, which vary greatly among urban, suburban, and rural areas of the state. Programs should be monitored and

evaluated on an ongoing basis to ensure their ability to protect public safety and to ensure compliance with applicable state and federal regulations. Nevertheless, counties believe that the state must continue to offer a commitment option for those juvenile offenders with the most serious criminogenic profile and most severe treatment needs.

4) Bail
   Unless transferred to adult court, juveniles should not be entitled to bail. Release on their own recognizance should be held pending the outcome of the proceedings.

5) Separation of Offenders
   We support the separation of juveniles into classes of sophistication. Separation should be based upon case-by-case determinations, taking into account age, maturity, need for secure custody among other factors, since separation by age or offense alone can place very unsophisticated offenders among the more mature, sophisticated offenders.

   In view of the high cost of constructing separate juvenile hall facilities, emphasis should be placed on establishment of facilities and programs that facilitate separation.

6) Removal of Serious Offenders to Adult Court
   To the greatest extent possible, determinations regarding the fitness of serious offenders should be made by the juvenile court on a case-by-case basis.

7) Jury Trial for Serious Offenders
   Except when transferred to adult court, juveniles should not be afforded the right to a jury trial — even when charged with a serious offense.

General Principles for Local Corrections

Definition
Local corrections include maximum, medium and minimum security incarceration, work furlough programs, home detention, county parole, probation, Post Release Community Supervision (PRCS) and community-based programs for convicted persons.

Purpose
We believe that swift and certain arrest, conviction, and punishment is a major deterrent to crime. Pragmatic experience justifies the continuation of rehabilitative programs for those convicted persons whom a court determines must be incarcerated and/or placed on local supervision.

In light of the state's recent efforts on corrections reform — primarily on recidivism and overcrowding in state detention facilities, counties feel it is essential to articulate their values and objectives as vital participants in the overall corrections continuum. Further, counties understand that they must be active participants in any successful effort to improve the corrections system in our state. Given that local and state corrections systems are interconnected, true reform must consider the advantage — if not necessity — of investing in local programs and services to help the state reduce the rate of growth in the prison population. Front-end investment in local programs and initiatives will enrich the changes

currently being contemplated to the state system and, more importantly, will yield greater economic and social dividends that benefit communities across the state.

An optimum corrections strategy must feature a strong and committed partnership between the state and local governments. State and local authorities must focus on making productive use of offenders' time while in custody or under state or local supervision. A shared commitment to rehabilitation can help address the inextricably linked challenges of recidivism and facility overcrowding. The most effective method of rehabilitation is one that maintains ties to an offender's community.

Programs and services must be adequately funded to enable counties to accomplish their functions in the corrections system and to ensure successful outcomes for offenders. To the extent that new programs or services are contemplated, or proposed for realignment, support must be in the form of a dedicated, new and sustained funding source specific to the program and/or service rather than a redirection of existing resources, and adequate to achieve specific outcomes. In addition, any realignment must be examined in relation to how it affects the entire corrections continuum and in context of sound, evidence based practices. Any proposed realignment of programs and responsibility from the state to counties must be guided by CSAC's existing Realignment Principles.

System and process changes must recognize that the 58 California counties have unique characteristics, differing capacities, and diverse environments. Programs should be designed to promote innovation at the local level and to permit maximum flexibility, so that services can best target individual community needs and capacities. Data collection and sharing is additionally critical as counties implement new criminal justice efforts.

Equal Treatment

Conditions, treatment and correctional opportunities that are equal for all detainees, regardless of gender, are strongly supported. State policy must allow recognition of the individual's right to privacy and the differing programmatic needs of individuals.

Community-Based Corrections

The most cost-effective method of rehabilitating convicted persons is the least restrictive alternative that is close to the individual's community and should be encouraged where possible.

State policy must recognize that correctional programs must always be balanced against the need for public protection and that community-based corrections programs are only successful to the extent that they are sufficiently funded.

Relationship to Human Services Systems

State policy toward corrections should reflect a holistic philosophy, which recognizes that most persons entering the correctional system should be provided welfare, medical, mental health, vocational and educational services. Efforts to rehabilitate persons entering the correctional system should involve these other services, based on the needs — and, when possible, a risk assessment — of the individual.

Relationship to Mental Health System: Mentally Ill Diversion Programs

Adequate mental health services can reduce criminal justice costs and utilization. Appropriate diagnosis and treatment services, as well as increased use of diversion programs, will result in positive outcomes for offenders with a mental illness. Ultimately, appropriate mental health services will benefit the public

safety system. Counties continue to work across disciplines to achieve good outcomes for persons with mental illness and/or co-occurring substance use disorder issues.

Inmate Medical Services

CSAC supports efforts at the federal level to permit local governments to access third-party payments for health care provided in detention facilities, including medical services provided for those who are accused, but not yet convicted. CSAC also supports efforts to ensure continuity of benefits for those detained in county detention facilities – adult and juvenile – and for swift reenrollment in the appropriate benefits program upon a detainee's release.

Private Programs

Private correctional programs should be encouraged for those categories of offenders that can most effectively be rehabilitated in this manner.

Investment in Local Programs and Facilities

The state's investment in local programs and facilities returns an overall benefit to the state corrections system and community safety. State support of local programs and facilities will aid materially in addressing the "revolving door" problem in state and local detention facilities.

The state should invest in improving, expanding and renovating local detention facilities to address overcrowding, early releases, and improved delivery of inmate health care. Incentives should be included to encourage in-custody treatment programs and other services.

The state should invest in adult probation services — using as a potential model the Juvenile Justice Crime Prevention Act (JJCPA) — to build a continuum of intervention, prevention, and supervision services for adult offenders.

The state should continue to fully support the successful JJCPA initiative, which provides a range of juvenile crime prevention and intervention programs and which represents a critical component of an overall crime reduction and public safety improvement strategy. Diverting juveniles from a life of offending will help to reduce pressure on the adult system.

The state should invest in mentally ill in-custody treatment and jail diversion programs, where treatment and services can help promote long-term stability in mentally ill offenders or those with co-occurring disorders, decrease recidivism, and divert appropriate offenders out of the criminal justice system.

The state should continue to invest in alcohol and ~~drug~~ substance use disorder treatment and diversion programs, including but not limited to outpatient treatment facilities, given that the vast majority of inmates in state and local systems struggle with addiction, which is a primary factor in their criminality.

Inmate Reentry Programs

Reentry programs represent a promising means for addressing recidivism by providing a continuum of care that facilitates early risk assessment, prevention, and transition of inmates back into the community through appropriate treatment, life skills training, job placement, and other services and supports. The state should consider further investment in multiagency programs authorized under SB

618[1], which are built on proven, evidence-based strategies including comprehensive pre-sentence assessments, in-custody treatment, targeted case management, and the development of an individualized life plan. These programs promote a permanent shift in the way nonviolent felony offenders are managed, treated and released into their respective communities. Examples of program elements that have been demonstrated to improve offenders' chances for a successful reintegration into their communities upon release from custody include, but are not limited to, the following:

a. Early risks and needs assessment that incorporates assessments of the need for treatment of alcohol and ~~other drug~~substance ~~abuse~~use disorders, and the degree of need for literacy, vocational and mental health services;
b. In-custody treatment that is appropriate to each individual's needs — no one-size-fits-all programming;
c. After care and relapse prevention services to maintain a "clean and sober" lifestyle;
d. Strong linkages to treatment, vocational training, and support services in the community;
e. Prearranged housing and employment (or vocational training) for offenders before release into their communities of residence;
f. Completion of a reentry plan prior to the offenders' transition back into the community that addresses the following, but is not limited to: an offender's housing, employment, medical, dental, and rehabilitative service needs;
g. Preparation of the community and offenders' families to receive and support each offender's new law-respecting and productive lifestyle before release through counseling and public education that recognize and address the inter-generational impact and cycles of criminal justice system involvement.
h. Long-term mentorship and support from faith-based and other community and cultural support organizations that will last a lifetime, not just the duration of the parole period; and
i. Community-based treatment options and sanctions.
j. Counties believe that such reentry programs should include incentives for inmate participation.

Siting of New Facilities

Counties acknowledge that placement of correctional facilities is controversial. However, the state must be sensitive to community response to changing the use of, expanding, or siting new correctional facilities (prisons, community correctional facilities, or reentry facilities). Counties and other affected municipalities must be involved as active participants in planning and decision-making processes regarding site selection. Providing for security and appropriate mitigations to the local community are essential.

Impact on Local Treatment Capacity

Counties and the state must be aware of the impact on local communities' existing treatment capacity (e.g., mental health, drug treatment, vocational services, sex offender treatment, indigent healthcare, developmental services, and services for special needs populations) if the correction reforms contemplate a major new demand on services as part of development of community correctional facilities, reentry programs, or other locally based programs. Specialized treatment services that are not widely available are likely the first to be overtaxed. To prevent adverse impacts upon existing alcohol and ~~drug~~ substance use disorder and mental health treatment programs for primarily non-criminal

[1]Chapter 603, Statutes of 2005.

justice system participants, treatment capacity shall be increased to accommodate criminal justice participants. In addition, treatment capacity shall be separately developed and funded.

Impact on Local Criminal Justice Systems

Proposals must adequately assess the impact on local criminal justice systems (courts, prosecution and defense, probation, detention systems and local law enforcement).

Emerging and Best Practices

Counties support the development and implementation of a mechanism for collecting and sharing of best practices that can help advance correction reform efforts.

Adult Correctional Institutions

Counties should continue to administer adult correctional institutions for those whose conviction(s) require and/or results in local incarceration.

The state and counties should establish a collaborative planning process to review the relationship of local and state corrections programs.

Counties should continue to have flexibility to build and operate facilities that meet local needs. Specific methods of administering facilities and programs should not be mandated by statute.

Adult Probation

Counties should continue to provide adult probation services as a cost-effective alternative to post-sentence incarceration and to provide services—as determined appropriate—to persons released from local correctional facilities. Counties should be given flexibility to allocate resources at the local level according to the specific needs of their probation population and consideration should be granted to programs that allow such discretion. State programs that provide fiscal incentives to counties for keeping convicted offenders out of state institutions should be discouraged unless such programs – on balance – result in system improvements. State funding should be based upon a state-county partnership effort that seeks to protect the public and to address the needs of individuals who come into contact with the justice system. Such a partnership would acknowledge that final decisions on commitments to state institutions are made by the courts, a separate branch of government, and are beyond the control of counties. Some integration of county probation and state parole services should be considered. Utilization of electronic monitoring for probationers and parolees should be considered where cost-effective and appropriate for local needs.

General Principles for Juvenile Corrections

We believe that efforts to curtail the criminal behavior of young people are of the highest priority need within the correctional area. The long-term costs resulting from young offenders who continue their criminal activities justifies extraordinary efforts to rehabilitate them.

Efforts should be made to force parents to assume greater responsibility for the actions of their children, including fines and sanctions, if necessary. Counties should be given flexibility to allocate resources at the local level according to the specific needs of their probation population and consideration should be granted to programs that allow such discretion. State programs that provide fiscal incentives to counties for keeping convicted offenders out of state institutions should be discouraged unless such programs – on balance – result in system improvements. Any program should

recognize that final decisions on commitments to state institutions are made by the courts, a separate branch of government, and are beyond the control of counties.

Juvenile Correctional Institutions

Counties should continue to administer juvenile correctional institutions and programs for the majority of youths requiring institutionalization. Retention of youths at the local level benefits the state by reducing demands on programs and institutions operated by the California Division of Juvenile Justice.

While counties believe that a state-operated rehabilitation and detention system is a necessary component of the continuum of services for juvenile offenders, CSAC opposes efforts that would require any additional county subsidy of that system. The state should provide subvention for these activities at a reasonable level, with provisions for escalation so that actual expenses will be met.

Juvenile Probation

Counties should continue to provide juvenile probation services as a cost-effective alternative to post-adjudication and to provide juvenile probation services to individual youths and their families after the youth's release from a local correctional facility.

Truants, run-a-ways, and youths who are beyond the control of their parents should continue to be removed from the justice system except in unusual circumstances. These youths should be the responsibility of their parents and the community, not the government. Imposing fines and/or sanctions on parents to prompt their participation in their children's lives and involvement in the process should remain an option.

Gang Violence Prevention

Counties recognize the devastating societal impacts of gang violence – not only on the victims of gang-related crimes, but also on the lives of gang members and their families. Counties are committed to working with allied agencies, municipalities, and community-based organizations to address gang violence and to promote healthy and safe communities. These efforts require the support of federal and state governments and should employ regional strategies and partnerships, where appropriate.

Human Services System Referral of Juveniles

State policy toward juvenile corrections must be built on the realization that a juvenile offender may be more appropriately served in the human services system. Considering the high suicide potential of youths held in detention facilities and, acknowledging the fact that juvenile offenses are more often impulse activities than are adult offenses, juvenile cases and placement decisions should be reviewed more closely under this light.

Federal Criminal Justice Assistance

The federal government should continue to provide funding for projects that improve the operation and efficiency of the justice system and that improve the quality of justice. Such programs should provide for maximum local discretion in designing programs that are consistent with local needs and objectives.

Section 3: Sex Offender Management

For the safety and well-being of California's citizens, especially those most vulnerable to sexual assault, it is essential for counties and the state to manage known sex offenders living in our communities in ways that most effectively reduce the likelihood that they will commit another offense, whether such

reoffending occurs while they are under the formal supervision of the criminal justice system or takes place after that period of supervision comes to an end.

In light of this counties need to develop strategies to 1) educate county residents, 2) effectively manage the sex offender population, which may or may not coincide with existing state policy, 3) assess which sex offenders are at the highest risk to re-offend and thus in need of monitoring and 4) partner with other state and local organizations that assist in supervision of sex offenders.

To that end, CSAC has adopted the following principles and policy on sex offender management.

Any effective sex offender management policy should contain restriction clauses that do not focus on where a sex offender lives but rather on the offender's movements. Counties believe an offender's activities and whereabouts pose a greater danger than his or her residence. Therefore, any strategy should consider the specific offense of the sex offender and prohibit his/her travel to areas that relate to their specific offense.

Each county, when taking actions to address and/or improve sex offender management within its boundaries, should do so in a manner that does not create difficulties for other counties to manage the sex offender population within their jurisdiction.

There are many community misconceptions about how to best monitor the sex offender population, how sex offenders are currently monitored and the threats sex offenders do and do not pose to communities. Any comprehensive sex offender management program must contain a community education component for it to be successful.

Supervision programs administered at the local level will require stable and adequate funding from the State to ensure that the programs are appropriately staffed, accessible to local law enforcement departments, and effective.

Global Positioning Systems (GPS) devices are but one of a multitude of tools that can be used simultaneously to monitor and supervise sex offenders. California counties believe that if the State is to adopt the use of GPS to monitor sex offenders a common system should be developed. This system should be portable and accessible no matter where an offender travels within California.

Counties and the state should rely more heavily on the use of risk and needs assessments to determine how to allocate resources. These assessments will allow an agency at the local level to determine who is most at risk to reoffend and in need of monitoring.

Regional collaboration should be encouraged as a means to address sex offender management.

The level of government with jurisdiction to supervise a sex offender (state parole or county probation) should be responsible and be given the authority for managing that offender.

Counties believe that for any policy to work, local governments and the State must work collaboratively to manage this population of offenders. The passage of Jessica's Law (Proposition 83, November 2006) intensified discussions regarding sex offender management and the public's perception about effective sex offender management policies. Accordingly, state and local governments should reexamine sex offender management policies.

Section 4: Judicial Branch Matters

Trial Court Management

The recognized need for greater uniformity and efficiency in the trial courts must be balanced against the need for a court system that is responsive and adaptable to unique local circumstances. Any statewide administrative structure must provide a mechanism for consideration of local needs.

Trial Court Structure

We support a unified consolidated trial court system of general jurisdiction that maintains the accessibility provided by existing trial courts. The state shall continue to accept financial responsibility for any increased costs resulting from a unified system.

Trial Court Financing

Sole responsibility for the costs of trial court operations should reside with the state, not the counties. Nevertheless, counties continue to bear the fiscal responsibility for several local judicial services that are driven by state policy decision over which counties have little or no control. We strongly believe that it is appropriate for the state to assume greater fiscal responsibility for other justice services related to trial courts, including collaborative courts. Further, we urge that the definition of court operations financed by the state should include the district attorney, the public defender, court appointed counsel, and probation.

Trial Court Facilities

The court facility transfers process that concluded in 2009 places responsibility for trial court facility maintenance, construction, planning, design, rehabilitation, replacement, leasing, and acquisition squarely with the state judicial branch. Counties remain committed to working in partnership with the courts to fulfill the terms of the transfer agreements and to address transitional issues as they arise.

Court Services

Although court operation services are the responsibility of the state, certain county services provided by probation and sheriff departments are directly supportive of the trial courts. Bail and own recognizance investigations, as well as pre-sentence reports, should be provided by probation, sheriff, and other county departments to avoid duplication of functions, but their costs should be recognized as part of the cost of operating trial courts.

Jurors and Juries

Counties should be encouraged to support programs that maximize use of potential jurors and minimize unproductive waiting time. These programs can save money, while encouraging citizens to serve as jurors. These efforts must consider local needs and circumstances. To further promote efficiency, counties support the use of fewer than twelve person juries in civil cases.

Collaborative Courts

Counties support collaborative courts that address the needs and unique circumstances of specified populations such as the mentally ill, those with substance use disorders, and veterans. Given that the provision of county services is vital to the success of collaborative courts, these initiatives must be developed locally and entered into collaboratively with the joint commitment of the court and county. This decision making process must include advance identification of county resources – including, but not limited to, mental health treatment and alcohol and ~~drug~~ substance use disorder treatment

programs and services, prosecution and defense, and probations services – available to support the collaborative court in achieving its objectives.

Court and County Collection Efforts

Improving the collection of court-ordered debt is a shared commitment of counties and courts. An appropriately aggressive and successful collection effort yields important benefits for both courts and counties. Counties support local determination of both the governance and operational structure of the court-ordered debt collection program and remain committed to jointly pursuing with the courts strategies and options to maximize recovery of court-ordered debt.

Section 5: Family Violence

CSAC remains committed to raising awareness of the toll of family violence on families and communities by supporting efforts that target family violence prevention, intervention and treatment. Specific strategies for early intervention and success should be developed through cooperation between state and local governments, as well as community, and private organizations addressing family violence issues taking into account that violence adversely impacts Californians, particularly those in disadvantaged communities, at disproportionate rates. ~~.~~

Since counties have specific responsibilities in certifying domestic violence batterer intervention programs, it is in the best interest of the state and counties that these programs provide treatment that addresses the criminogenic needs of offenders and looks at evidence-based or promising practices as the most effective standard for certifying batterer intervention programs.

Section 6: Government Liability

The current government liability system is out of balance. It functions almost exclusively as a source of compensation for injured parties. Other objectives of this system, such as the deterrence of wrongful conduct and protection of governmental decision-making, have been largely ignored. Moreover, as a compensatory system of ever-increasing proportions, it is unplanned, unpredictable and fiscally unsound – both for the legitimate claimant and for the taxpayers who fund public agencies.

Among the principal causes of these problems is the philosophy – expressed in statutes and decisions narrowing governmental immunities under the Tort Claims Act – that private loss should be shifted to society where possible on the basis of shared risk, irrespective of fault or responsibility in the traditional tort law sense.

The expansion of government liability over recent years has had the salutary effect of forcing public agencies to evaluate their activities in terms of risk and to adopt risk management practices. However, liability consciousness is eroding the independent judgment of public decision-makers. In many instances, mandated services are being performed at lower levels and non-mandated services are being reduced or eliminated altogether. Increasingly, funds and efforts are being diverted from programs serving the public to the insurance and legal judicial systems.

Until recently, there appeared to be no end to expansion of government liability costs. Now, however, the "deep pocket" has been cut off. Insurance is either unavailable or cost prohibitive and tax revenues are severely limited. Moreover, restricted revenue authority not only curtails the ability of public entities to pay, but also increases exposure to liability by reducing funding for maintenance and repair programs.

As a result, public entities and ultimately, the Legislature, face difficult fiscal decisions when trying to balance between the provision of governmental service and the continued expansion of government liability.

There is a need for data on the actual cost impacts of government tort liability. As a result of previous CSAC efforts, insurance costs for counties are fairly well documented. However, more information is needed about the cost of settlements and awards and about the very heavy "transactional costs" of administering and defending claims. We also need more information about the programmatic decisions being forced upon public entities: e.g., what activities are being dropped because of high liability? CSAC and its member counties must attempt to fill this information gap.

CSAC should advocate for the establishment of reasonable limits upon government liability and the balancing of compensatory function of the present system with the public interests in efficient, fiscally sound government. This does not imply a return to "sovereign immunity" concepts or a general turning away of injured parties. It simply recognizes, as did the original Tort Claims Act, that: (1) government should not be more liable than private parties, and (2) that in some cases there is reason for government to be less liable than private parties. It must be remembered that government exists to provide essential services to people and most of these services could not be provided otherwise. A private party faced with risks that are inherent in many government services would drop the activity and take up another line of work. Government does not have that option.

In attempting to limit government liability, CSAC's efforts should bring governmental liability into balance with the degree of fault and need for governmental service.

In advocating an "era of limits" in government liability, CSAC should take the view of the taxpayer rather than that of counties per se. At all governmental levels, it is the taxpayer who carries the real burden of government liability and has most at stake in bringing the present system into better balance. In this regard, it should be remembered that the insurance industry is not a shield, real or imagined, between the claimant and the taxpayer.

Administration of Justice Year in Review and 2019 Legislative Priorities

Attachment Seven

Memo: AOJ Year in Review and 2019 Legislative Priorities

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November 14, 2018

To: CSAC Administration of Justice Policy Committee

From: Jessica Devencenzi, Legislative Representative
Stanicia Boatner, Legislative Analyst

Re: Administration of Justice Year in Review and 2019 Legislative Priorities

The 2017-18 legislative session presented many high-priority bills with significant impacts to counties. In this memo, please find a review of 2018 highlights as well as priorities for the coming 2019 session.

2018 Legislation

SB 10, by Senator Bob Hertzberg, enacts a risk-based system that seeks to balance public safety and fairness and is based on the Chief Justice's Pretrial Detention Workgroup recommendations. This legislation provides for the establishment of a new pretrial release system that includes pretrial assessment services provided by courts or public agencies, such as county probation departments. Counties will have the option to contract with the Judicial Council to perform this function. This legislation has a delayed implementation date of October 1, 2019. There has been one piece of clean-up legislation—**SB 1054** (Hertzberg), which fixed an incorrect cross reference to a sex offender registration statute not yet in effect and allows the County of San Francisco to use non-public employees to conduct the risk assessments until 2023. (SB 10 and SB 1054 Chaptered)

AB 372, by Assembly Member Mark Stone, authorizes a pilot program that allows the counties of Napa, Santa Barbara, San Luis Obispo, Santa Clara, Santa Cruz, and Yolo to offer an alternative to the batterer's intervention treatment program. The pilots will serve as the first step in assessing whether alternative approaches are more effective in addressing the criminogenic needs of batterers and reducing recidivism. CSAC sponsored/supported this measure. (Chaptered)

SB 1106, by Senator Jerry Hill, extends the operative date of the existing Transitional Age Youth pilot program to January 1, 2022, and expands the scope of the program to include Ventura County. This measure allows more young adult offenders to be housed in local juvenile detention facilities, instead of adult local detention facilities, where they will have access to these services. CSAC supported this measure. (Chaptered)

SB 931, by Senator Bob Hertzberg, amends the Lanterman-Petris-Short Act to specify that custody status cannot be used as the sole reason to postpone the psychiatric conservatorship evaluation process. Under existing law and practice, these individuals often find themselves confined in the county jail for substantial periods of time, and are not evaluated for conservatorship status and appropriate treatment options until the conclusion of their criminal case. Delaying conservatorship evaluations often has the effect of keeping these persons in custody longer than necessary. This measure addresses this issue by prohibiting a conservatorship investigator from failing to schedule an investigation based solely upon the custody status of the individual. CSAC supported this measure. (Chaptered)

SB 215, by Senator Jim Beall, remedies a number of concerns related to the new jail diversion program for those living with mental illness created under budget trailer bill AB 1810 (Chapter 34, Statutes of 2018)[1]. Specifically, the bill excludes certain violent offenses from the diversion program (including murder and sex offenses), preserves victim restitution, and allows the court to require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. CSAC supported this measure. (Chaptered)

SB 1303, by Senator Richard Pan, would have imposed a costly new mandate that required non-charter counties with a population of 500,000 or greater to either: (1) replace the Office of Coroner or Sheriff-Coroner with an Office of Medical Examiner by January 1, 2020; or (2) adopt a policy requiring referral of death investigations to a county that has implemented an Office of Medical Examiner. CSAC opposed this measure. (Vetoed)

AB 2720, by Assembly Member Marie Waldron, would have authorized county probation departments to use the constitutionally protected Juvenile Reentry Grant Special Account for rehabilitative services for persons who have been discharged from a juvenile court's jurisdiction within the prior two years. While CSAC supports providing rehabilitation and agrees that reentry services are essential to reducing recidivism among this population, the Juvenile Reentry Grant Special Account, which is a constitutional protected realignment account, and not the appropriate funding source. CSAC opposed this measure. (Vetoed)

2019 Legislative Priorities

Bail Reform. The California Money Bail Reform Act was signed into law in August of this year. This new law will become effective October 1, 2019 and changes the current money bail system to a risk-based system. There is a referendum pending and, if the referendum qualifies, it will delay implementation until 2020. CSAC will work closely with the Administration, Judicial Council and the Chief Probation Officers (CPOC) to help ensure that counties have the funding necessary for planning, should a county chose to contract with Judicial Council to handle the pre-trial assessments and supervision.

Trial Court Security. Trial Court Security was realigned to the counties as part of 2011 realignment. The amount of funding that was provided to the counties has not kept up with increased personnel and security costs. As such, a number of counties are either in litigation or on the cusp of litigation with their local courts. CSAC will work to make Trial Court Security more functional.

Mental Health Diversion. As discussed above, the legislature created a new diversion program for mentally ill offenders. CSAC worked with Senator Beall's office on SB 215 and will continue to CSAC will continue to work with them to make this program workable for the counties.

Implementation of Domestic Violence Batterer Intervention Programs. AB 372 allows six counties to offer alternatives to the statutorily required 52 week Batterer Intervention Program. CSAC will facilitate the discussion of the implementation of AB 372 by providing research and guidance to the six counties to better assess the needs of domestic violence offenders.

[1] **AB 1810**, by the Budget Committee, was signed into law in June. This bill created a new diversion program for mentally ill offenders provided certain requirements are met, including the availability of a treatment program for the offender.

Juvenile Hall Repurposing. Juvenile justice in California has undergone a variety of reforms in the past decade. These reforms have led to a lower population and an increase in the number of vacant beds in juvenile facilities. CSAC will work with stakeholders to look at long term solutions for utilization of these vacant beds.

Federal Priorities

State Criminal Alien Assistance Program. CSAC has continued to play a lead role in advocating for adequate resources for the State Criminal Alien Assistance Program (SCAAP). Program modifications to DOJ's fiscal year 2020 SCAAP will mean that California counties, as a result of compliance with the requirements of SB 54, will be ineligible for SCAAP funding beginning in FY 2020.

Currently we are in the FY 18 cycle, so the pending program changes would not affect this year's awards (or the FY 19 awards). The reporting period for the 2020 cycle started on July 1, 2018, and so DOJ has advised states and counties to take note of the program changes now.

As you know, there have been several lawsuits against the Trump administration's efforts to attach similar conditions to both the Byrne/JAG program and COPS grants (a number of these lawsuits are ongoing). We assume a similar litigation strategy may be contemplated in anticipation of DOJ's stated intent to condition the receipt of SCAAP funds on compliance with the new directives. CSAC will continue to advocate for SCAAP funds.

Victims of Crime Act and Violence Against Women Act. Both the House and Senate fiscal year 2018 Commerce-Justice-Science (CJS) appropriations bills (HR 3267; S 1662) include a significant boost in funding for the Victims of Crime Act (VOCA). The House legislation would dedicate $4.6 billion for the VOCA fund in fiscal year 2018, or an 80 percent increase over the previous cap of $2.57 billion; the Senate bill includes $3.64 billion in VOCA funding. In addition, both CJS bills would provide an increase for Violence Against Women Act (VAWA) programs – the House bill includes a $46 million boost in funding while the Senate bill would provide a $2 million increase.