

Senate Bill No. 10

Passed the Senate August 21, 2018

Secretary of the Senate

Passed the Assembly August 20, 2018

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2018, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 10, 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 prearrestment 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.

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 prearrestment 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 prearrestment reviews, make release decisions, and may authorize subordinate judicial officers, as defined in Rule 10.703 of the California Rules of Court, to conduct prearrestment reviews and make release decisions authorized by this chapter.

(b) The authority for court prearrestment 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 prearrestment 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 prearrestment 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 prearrestment 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 prearrestment 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 all 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.

Approved _____, 2018

Governor