

AMENDED IN ASSEMBLY JULY 5, 2017

AMENDED IN SENATE MARCH 27, 2017

AMENDED IN SENATE JANUARY 17, 2017

SENATE BILL**No. 10**

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

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

December 5, 2016

An act to amend Sections 821, 825, 1269, 1269a, 1269c, 1275.1, 1277, 1278, 1284, 1295, and 1318 of, to add Sections 1275a, 1275b, 1318.2, and 1318.3 to, to repeal Sections 815a, 1270, 1270.1, 1270.2, 1288, 1319, and 1319.5 of, and to repeal and add Sections 1269b, 1275, 1289, and 1318.1 of, the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law provides for the procedure of approving and accepting bail, and issuing an order for the appearance and release of an arrested person. Existing law requires that bail be set in a fixed amount, as specified, and requires, in setting, reducing, or denying bail, a judge or magistrate to take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a hearing of the case. Under existing law, the magistrate or commissioner to whom the application is made is authorized to set bail in an amount that he or she deems sufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of

domestic violence, and to set bail on the terms and conditions that he or she, in his or her discretion, deems appropriate, or he or she may authorize the defendant's release on his or her own recognizance. Existing law provides that a defendant being held for a misdemeanor offense is entitled to be released on his or her own recognizance, unless the court makes a finding on the record that an own recognizance release would compromise public safety or would not reasonably ensure the appearance of the defendant as required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 SEC. 4. Section 821 of the Penal Code is amended to read:

28 821. (a) If the offense charged is a felony, and the arrest
29 occurs in the county in which the warrant was issued, the officer
30 making the arrest must take the defendant before the magistrate
31 who issued the warrant or some other magistrate of the same
32 county.

33 ~~¶~~

34 (b) *If* the defendant is arrested in another county, the officer
35 must, without unnecessary delay, inform the defendant in writing
36 of his *or her* right to be taken before a magistrate in that county,
37 note on the warrant that he *or she* has so informed defendant, and,
38 upon being required by defendant, take him *or her* before a
39 magistrate in that county, who must ~~admit him to bail in the amount~~
40 ~~specified in the endorsement referred to in Section 815a, release~~

1 *the defendant subject to a release agreement under Section 1318,*
 2 *with or without conditions, or set monetary bail pursuant to Section*
 3 *1275a if the warrant authorizes pretrial release pursuant to that*
 4 *section, and direct the defendant to appear before the court or*
 5 *magistrate by whom the warrant was issued on or before a day*
 6 *certain which shall in no case be more than 25 days after such*
 7 *admittance to bail. If bail be forthwith given, the magistrate shall*
 8 *take the same and endorse thereon a memorandum of the aforesaid*
 9 *order for the appearance of the defendant, or, if the defendant so*
 10 *requires, he may be released on bail set on the warrant by the*
 11 *issuing court, as provided in Section 1269b of this code, without*
 12 *an appearance before a magistrate. pretrial release or admission*
 13 *to bail. If bail or pretrial release is granted, the magistrate shall*
 14 *endorse a memorandum of the order for the appearance of the*
 15 *defendant, or may release the defendant pursuant to Section 1269b,*
 16 *without an appearance if the warrant authorizes pretrial release*
 17 *pursuant to that section.*

18 ~~¶~~

19 (c) *If the warrant on which the defendant is arrested in another*
 20 *county does not have bail set thereon, authorize pretrial release*
 21 *or admission to bail, or if the defendant arrested in another county*
 22 *does not require the arresting officer to take him or her before a*
 23 *magistrate in that county for the purpose of being admitted to bail,*
 24 *pretrial release or admission to bail, or if such defendant, after*
 25 *being admitted to bail, does not forthwith give provide bail, the*
 26 *arresting officer shall immediately notify the law enforcement*
 27 *agency requesting the arrest in the county in which the warrant*
 28 *was issued that such defendant is in custody, and thereafter such*
 29 *the law enforcement agency shall take custody of the defendant*
 30 *within five days, or five court days if the law enforcement agency*
 31 *requesting the arrest is more than 400 miles from the county in*
 32 *which the defendant is held in custody, in the county in which he*
 33 *or she was arrested and shall take such the defendant before the*
 34 *magistrate who issued the warrant, or before some other magistrate*
 35 *of the same county.*

36 ~~SEC. 4.~~

37 *SEC. 5.* Section 825 of the Penal Code is amended to read:

38 825. (a) (1) Except as provided in paragraph (2), the defendant
 39 shall in all cases be taken before the magistrate without unnecessary

1 delay, and, in any event, within 48 hours after his or her arrest,
2 excluding Sundays and holidays.

3 (2) When the 48 hours prescribed by paragraph (1) expire at a
4 time when the court in which the magistrate is sitting is not in
5 session, that time shall be extended to include the duration of the
6 next court session on the judicial day immediately following. If
7 the 48-hour period expires at a time when the court in which the
8 magistrate is sitting is in session, the arraignment may take place
9 at any time during that session. However, ~~when~~ *if* the defendant's
10 arrest occurs on a Wednesday after the conclusion of the day's
11 court session, ~~or if the arrest occurs at any time on a Wednesday~~
12 ~~session~~ and if the Wednesday is *not* a court holiday, the defendant
13 shall be taken before the magistrate not later than the following
14 Friday, if the Friday is not a court holiday. ~~If the Friday is a court~~
15 ~~holiday, the defendant shall be taken before the magistrate no later~~
16 ~~than the Thursday immediately following the Wednesday arrest.~~

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

27 ~~SEC. 5.~~

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

29 1269. The taking of monetary bail consists in the acceptance,
30 by a competent court or magistrate, of the undertaking of sufficient
31 monetary bail for the appearance of the defendant, according to
32 the terms of the undertaking, or that the bail will pay to the people
33 of this state a specified sum. Upon filing, the clerk shall enter in
34 the register of actions the date and amounts of the bond, the
35 defendant's name, and, if applicable, the name or names of the
36 surety or sureties thereon. In the event of the loss or destruction
37 of such bond, such entries so made shall be prima facie evidence
38 of the due execution of such bond as required by law.

39 Whenever any bail bond has been deposited in any criminal
40 action or proceeding in a municipal or superior court or in any

1 proceeding in habeas corpus in a superior court, and it is made to
2 appear to the satisfaction of the court by affidavit or by testimony
3 in open court that more than three years have elapsed since the
4 exoneration or release of said bail, the court must direct that such
5 bond be destroyed.

6 ~~SEC. 6.~~

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

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

20 ~~SEC. 7.~~

21 *SEC. 8.* Section 1269b of the Penal Code is repealed.

22 ~~SEC. 8.~~

23 *SEC. 9.* Section 1269b is added to the Penal Code, to read:

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

39 (b) ~~A~~ *Except as provided in Section 821*, a person who is
40 arrested and booked into jail for a violent felony, as defined in

1 subdivision (c) of Section 667.5, shall not be considered for release
2 until the person appears before a judge or a magistrate for a hearing
3 in accordance with Section 1275a or 1275b. The pretrial services
4 agency shall not conduct a risk assessment or prepare a pretrial
5 services report for any person who is arrested and booked into jail
6 for a violent felony except in accordance with subdivision (f) of
7 Section 1275a.

8 (c) ~~The~~ Except as provided in Section 821, the pretrial services
9 agency shall, within _____ 24 hours of arrest, conduct a risk
10 assessment on a person arrested and booked into jail for one of the
11 following offenses and prepare a pretrial services report with
12 recommendations for conditions of release, however, the person
13 shall not be considered for release until the person appears before
14 a judge or magistrate for a hearing in accordance with Section
15 1275a or 1275b:

16 (1) A serious felony, as defined in subdivision (c) of Section
17 1192.7, except a violation of subdivision (a) of Section 460.

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

20 (3) A violation of paragraph (1) of subdivision (e) of Section
21 243.

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

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

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

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

1 for release under this subdivision and shall instead be considered
2 for release pursuant to subdivision (f).

3 (f) (1) Except as otherwise provided in subdivisions (b), (c),
4 and ~~(e)~~, *(e) of this section and Section 821*, upon completion of
5 the pretrial risk assessment and preparation of a pretrial services
6 report with recommendations for conditions of release, the pretrial
7 services agency shall immediately transmit the pretrial services
8 report and recommendations on conditions of release to a
9 magistrate, judge, or court commissioner. The magistrate, judge,
10 or court commissioner shall, no later than ~~_____~~ *six* hours after
11 receipt of the pretrial services agency's pretrial risk assessment
12 and pretrial services report with recommendations for conditions
13 of release, issue an oral or written order for release subject to a
14 release agreement under Section 1318 without further conditions
15 or subject to a condition or conditions in accordance with Section
16 1275a.

17 ~~(2) If the pretrial services report prepared by the pretrial services~~
18 ~~agency is not available, the magistrate, judge, or court~~
19 ~~commissioner shall release the person subject to a release~~
20 ~~agreement under Section 1318 without further conditions or subject~~
21 ~~to a condition or conditions in accordance with Section 1275a.~~
22 The

23 (2) *The* fact that the court has not received the report required
24 under this section shall not preclude release pursuant to this
25 ~~paragraph.~~ *subdivision.*

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

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

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

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

1 ~~SEC. 9.~~

2 *SEC. 10.* Section 1269c of the Penal Code is amended to read:

3 1269c. If a defendant is arrested without a warrant for a bailable
4 felony offense or for the misdemeanor offense of violating a
5 domestic violence restraining order, and a peace officer has
6 reasonable cause to believe that release subject to a release
7 agreement under Section 1318 without further conditions is
8 insufficient to ensure the defendant's appearance or to ensure the
9 protection of a victim, or family member of a victim, of domestic
10 violence, the peace officer shall, no later than _____ six hours after
11 the arrest, prepare a declaration under penalty of perjury setting
12 forth the facts and circumstances in support of his or her belief
13 and file it with a magistrate, as defined in Section 808, or his or
14 her commissioner, in the county in which the offense is alleged to
15 have been committed or having personal jurisdiction over the
16 defendant, requesting an order pursuant to subdivision (f) of
17 Section 1269b imposing a condition or conditions of release.

18 ~~SEC. 10.~~

19 *SEC. 11.* Section 1270 of the Penal Code is repealed.

20 ~~SEC. 11.~~

21 *SEC. 12.* Section 1270.1 of the Penal Code is repealed.

22 ~~SEC. 12.~~

23 *SEC. 13.* Section 1270.2 of the Penal Code is repealed.

24 ~~SEC. 13.~~

25 *SEC. 14.* Section 1275 of the Penal Code is repealed.

26 ~~SEC. 14.~~

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

28 1275. (a) (1) In making a pretrial release or detention decision
29 pursuant to Section 1275a or 1275b, a judge or magistrate shall
30 take into consideration the protection of the public, the seriousness
31 of the offense charged, the previous criminal record of the
32 defendant, the probability of his or her appearing at trial or at a
33 hearing of the case, and the presumption of innocence. The public
34 safety, the safety of the victim, and the probability of the accused
35 appearing in court as required shall be the primary considerations.

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

1 (3) It shall be the duty of the court to determine what condition
2 or conditions will ensure the safety of the community, secure the
3 defendant's appearance at trial or at a hearing of the case, and
4 facilitate pretrial release. If, pursuant to Section 1275b, the court
5 finds that no conditions will reasonably—~~assure~~ *ensure* the
6 defendant's appearance in court or at a hearing of the court and
7 protect public safety, the court shall issue an order with findings
8 of fact and a statement explaining what condition or conditions it
9 considered and why those conditions were inadequate.

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

13 (c) In making a pretrial release decision pursuant to Section
14 1275a, the judge or magistrate shall consider the pretrial services
15 agency's risk assessment, recommendations on conditions of
16 release, and the pretrial services report in accordance with Section
17 1318.3. If a judge or magistrate's release decision is not consistent
18 with the pretrial services program's risk assessment and
19 recommendations on conditions of release, the judge or magistrate
20 shall include in its order for release a statement of the reasons.

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

27 *(e) If a person is arrested for a serious felony, the prosecutor*
28 *shall provide notice of the hearing required by Section 1275a or*
29 *1275b to the alleged victim or next of kin of the alleged victim of*
30 *the offense for which the person was arrested, pursuant to*
31 *paragraph (3) of subdivision (f) of Section 28 of Article I of the*
32 *California Constitution.*

33 ~~SEC. 15.~~

34 *SEC. 16.* Section 1275a is added to the Penal Code, to read:

35 1275a. (a) Except as provided in subdivision (f) and Section
36 1275b, at the arraignment of a person who is in custody, the judge
37 or magistrate shall, after considering the pretrial services report
38 with recommendations for conditions of release and any relevant
39 information provided by the prosecuting attorney or the defendant,
40 order the pretrial release of the person subject to a release

1 agreement under Section 1318 without further conditions, unless
2 the judge or magistrate determines that the release will not
3 reasonably ~~assure~~ *ensure* the appearance of the person as required,
4 the safety of the victim, or public safety. If the judge or magistrate
5 releases the person subject to a release agreement under Section
6 1318 without further conditions, the reasons for that decision shall
7 be stated in the record and included in the court's minutes.

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

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

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

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

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

32 (3) (A) *If a person for whom any nonmonetary condition or*
33 *combination of conditions is imposed has the financial ability to*
34 *pay all or part of the costs associated with that condition or*
35 *conditions, the court may order the defendant to pay a reasonable*
36 *fee, which shall not exceed the actual cost of the condition or*
37 *conditions. Inability to pay all or a portion of the costs shall not*
38 *serve as grounds to impose more restrictive conditions.*

39 (B) *In cases of fraud or embezzlement prohibited in Section*
40 *186.11, the prosecutor may seek the remedies provided in that*

1 *section to preserve property or assets in the control of the*
2 *defendant or transferred by that person to a third party subsequent*
3 *to the alleged commission of the crime.*

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

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

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

24 (i) ~~“Ability to pay” means the defendant’s present ability to pay~~
25 ~~a specified amount without borrowing money, obtaining a loan,~~
26 ~~or paying for a bond.~~

27 (ii) ~~“Substantial hardship” means a significant infringement on~~
28 ~~a defendant’s ability to meet the basic necessities of life for himself~~
29 ~~or herself and his or her dependents. These basic necessities~~
30 ~~include, but are not limited to, food, shelter, communication,~~
31 ~~clothing, transportation, medical and dental care, child care, and~~
32 ~~education.~~

33 (B) *For purposes of this paragraph, “ability to pay” means the*
34 *defendant’s ability as defined in paragraph (2) of subdivision (g)*
35 *of Section 987.8 or as defined by the California Rules of Court*
36 *developed by the Judicial Council for this purpose.*

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

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

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

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

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

22 (2) If the defendant requests a pretrial risk assessment, the
23 assessment and report shall be completed within _____, 12 hours,
24 and within _____ 24 hours the defendant shall be considered for
25 release pursuant to subdivisions (a), (b), and (c).

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

31 (h) *For purposes of this section, "least restrictive" means those
32 release terms necessary to reasonably ensure the appearance of
33 the specific person, the safety of the victim, and public safety, as
34 determined by the court.*

35 ~~SEC. 16.~~

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

37 1275b. (a) A prosecuting attorney may file a motion with the
38 court at any time, including any time before or after a defendant's
39 release pursuant to *Section* 1269b, seeking the pretrial detention
40 of the defendant in any of the following circumstances:

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

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

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

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

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

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

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

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

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

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

24 (b) (1) If a motion for pretrial detention is filed pursuant to
25 subdivision (a), a hearing shall be held before a magistrate or judge
26 to determine whether to release the defendant pending trial unless
27 the hearing is waived by the defendant, either directly or, if he or
28 she is represented by counsel, through counsel. The defense
29 attorney shall be given notice and a reasonable opportunity to be
30 heard on the matter. If the defendant does not have counsel, the
31 court shall appoint counsel. The hearing shall be held ~~within the~~
32 ~~time period prescribed by Section 825, unless the hearing is held~~
33 ~~after arraignment, in which case the hearing shall be held within~~
34 ~~48 hours, or within 48 hours after filing the motion~~ unless waived
35 by the defendant either directly or, if represented by counsel,
36 through counsel.

37 (2) If the defendant waives a hearing under this section and a
38 pretrial risk assessment was conducted and a pretrial services report
39 was prepared, they shall not be provided to the parties named in

1 paragraph (2) of subdivision (f) and the defendant shall be ordered
2 detained.

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

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

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

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

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

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

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

30 (1) The protection of the public.

31 (2) The safety of the victim.

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

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

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

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

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

39 (g) If, after considering any relevant evidence provided by the
40 prosecuting attorney or the defendant, and if no condition or

1 combination of conditions would reasonably ~~assure~~ *ensure* the
2 safety of another person or persons from great bodily harm, the
3 court shall order the person detained pending trial only if, pursuant
4 to Section 12 of Article 1 of the Constitution, the court finds that
5 the defendant meets one of the following descriptions:

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

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

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

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

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

32 ~~SEC. 17.~~

33 *SEC. 18.* Section 1275.1 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ~~SEC. 18.~~

25 *SEC. 19.* Section 1277 of the Penal Code is amended to read:

26 1277. When the defendant has been held to answer upon an
27 examination for a public offense, pretrial release pursuant to
28 Section 1275a or admission to bail may be by the magistrate by
29 whom he *or she* is so held, or by any magistrate who has power
30 to issue the writ of habeas corpus.

31 ~~SEC. 19.~~

32 *SEC. 20.* Section 1278 of the Penal Code is amended to read:

33 1278. (a) (1) Upon a finding that monetary bail should be set
34 pursuant to subdivision (c) of Section 1275a, the defendant may
35 execute an unsecured appearance bond or a secured bond in the
36 amount specified by the court. The court may require, and the
37 defendant may request, that an unsecured appearance bond be
38 signed by uncompensated third parties.

39 (2) For the purposes of this subdivision, “unsecured appearance
40 bond” means an order to release a person upon his or her promise

1 to appear in court and his or her unsecured promise to pay an
2 amount of money, specified by the court, if he or she fails to appear
3 as promised.

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

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

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

38 ~~SEC. 20.~~

39 *SEC. 21.* Section 1284 of the Penal Code is amended to read:

1 1284. When the offense charged is not punishable with death,
 2 the officer serving the bench warrant must, if required, take the
 3 defendant before a magistrate in the county in which it is issued,
 4 or in which he *or she* is arrested, for the purpose of a pretrial release
 5 hearing. If the defendant appears before such magistrate without
 6 the bench warrant having been served upon ~~him~~, *him or her*, the
 7 magistrate shall deliver him *or her* into the custody of the sheriff
 8 for the purpose of immediate booking and the recording of
 9 identification data, whereupon the sheriff shall deliver the
 10 defendant back before the magistrate for the purpose of a pretrial
 11 release hearing.

12 ~~SEC. 21.~~

13 *SEC. 22.* Section 1288 of the Penal Code is repealed.

14 ~~SEC. 22.~~

15 *SEC. 23.* Section 1289 of the Penal Code is repealed.

16 ~~SEC. 23.~~

17 *SEC. 24.* Section 1289 is added to the Penal Code, to read:

18 1289. (a) After a defendant has been released from custody
 19 upon an indictment or information pursuant to Section 1275a, the
 20 court in which the charge is pending may, upon a change in
 21 circumstances, amend the release order to change the conditions
 22 of release, including the amount of any monetary bail. If, upon
 23 motion of the prosecuting attorney, the amount of monetary bail
 24 is increased, the court shall set bail in accordance with subdivision
 25 (c) of Section 1275a. If the defendant requests a change in the
 26 conditions of release, notice of the request shall be served upon
 27 the prosecuting attorney.

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

34 ~~(1) That there is either of the following:~~

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

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

39 ~~(2) That either of the following:~~

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

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

6 ~~(e)~~

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

12 ~~SEC. 24.~~

13 ~~SEC. 25.~~ Section 1295 of the Penal Code is amended to read:

14 1295. (a) The defendant, at any time after an order admitting
15 *the* defendant to bail pursuant to Section 1275a, instead of giving
16 bail may deposit, with the clerk of the court in which the defendant
17 is held to answer or notified to appear for arraignment, the sum
18 mentioned in the order or a percentage of the sum mentioned in
19 the order, not to exceed 10 percent, and, upon delivering to the
20 ~~officer~~ *officer*, in whose custody defendant is a certificate of the
21 deposit, the defendant shall be discharged from custody.

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

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

29 ~~SEC. 25.~~

30 ~~SEC. 26.~~ Section 1318 of the Penal Code is amended to read:

31 1318. The defendant shall not be released from custody under
32 ~~an~~ *his or her* own recognizance with no further conditions, or
33 released with a further condition or conditions, until the defendant
34 files with the clerk of the court or other person authorized to accept
35 bail a signed release agreement which includes:

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

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

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

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

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

11 ~~SEC. 26.~~

12 ~~SEC. 27.~~ Section 1318.1 of the Penal Code is repealed.

13 ~~SEC. 27.~~

14 ~~SEC. 28.~~ Section 1318.1 is added to the Penal Code, to read:

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

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

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

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

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

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

39 (c) Pretrial services agencies shall make every effort to assist
40 pretrial defendants with complying with their conditions of release

1 and to address noncompliance with pretrial services requirements
2 administratively.

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

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

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

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

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

20 ~~SEC. 28:~~

21 *SEC. 29.* Section 1318.2 is added to the Penal Code, to read:

22 1318.2. (a) The _____ shall do all of the following:

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

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

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

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

33 (3) (A) No later than _____, select a pretrial risk assessment
34 tool that meets the requirements of subdivision (b) of Section
35 1318.3 and make that tool available to counties.

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

39 (4) No later than _____, the _____ shall develop a plan to
40 provide technical assistance to counties regarding the

1 implementation of the pretrial risk assessment selected pursuant
2 to paragraph (3).

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

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

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

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

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

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

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

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

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

25 ~~SEC. 29.~~

26 *SEC. 30.* Section 1318.3 is added to the Penal Code, to read:

27 1318.3. (a) For purposes of this section, the following terms
28 have the following meanings:

29 (1) “Pretrial risk assessment tool” is the objective, standardized
30 analysis of information about an arrested person that accurately
31 measures the person’s probability of appearing in court as required
32 and the person’s potential risk of criminal conduct while on pretrial
33 release pending trial.

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

37 (3) “Validated” means developed through peer-reviewed
38 research and statistical analysis and proven to produce results that
39 are accurate, based on the characteristics of the population being
40 assessed, in predicting the likelihood that a person will fail to

1 appear for trial or act as a threat to the safety of the community
2 during the period of time between the initial arrest and the
3 subsequent trial for the offense.

4 (b) The pretrial risk assessment tool selected by _____ pursuant
5 to Section 1318.2 shall meet all of the following specifications:

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

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

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

14 (4) It shall be regularly validated and adjusted, as appropriate,
15 to ensure that the assessment instrument is equally accurate across
16 all racial groups, ethnic groups, and genders. The validation study
17 shall include testing for predictive bias, and disparate results by
18 race, ethnicity, and gender. The tool shall be adjusted to ensure
19 accuracy and to minimize disparate results.

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

25 ~~(6) It shall not give undue weight to factors such as criminal
26 history and other factors that correlate with race and class.~~

27 *(6) It shall give appropriate weight to factors, including criminal
28 history, in a manner that ensures accuracy while minimizing racial
29 and economic disparities.*

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

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

34 (c) If, prior to the effective date of the act that added this section,
35 a county is using a pretrial risk assessment tool, the county may
36 elect to continue using that pretrial risk assessment tool, provided
37 the tool meets the requirements of subdivision (b). For counties
38 that elect to continue use of an existing pretrial risk assessment
39 tool under this subdivision, the _____ shall review the tool to
40 determine whether it meets the requirements of subdivision (b).

1 The _____ shall also review the county's standards for the results
2 produced using the tool to determine whether it meets the
3 requirements contained in the policies developed pursuant to
4 subdivision (f). The county's pretrial risk assessment tool shall be
5 in compliance with the requirements in subdivisions (b) and (g)
6 by _____, as confirmed by the _____. If the county's pretrial risk
7 assessment tool is not in compliance by that date, the county shall
8 use the pretrial risk assessment tool selected by the _____ pursuant
9 to Section 1318.2.

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

15 (e) (1) The pretrial services agency shall prepare a pretrial
16 services report following the administration of the pretrial risk
17 assessment tool that contains the results of the pretrial risk
18 assessment tool, the offense charged, and a recommendation for
19 release under Section 1318 without further conditions or release
20 subject to the least restrictive further condition or conditions that
21 will reasonably ~~assure~~ *ensure* the arrested person's appearance in
22 court as required and public safety.

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

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

28 (f) The _____ shall develop policies regarding, at a minimum,
29 all of the following:

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

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

33 (3) Validation of risk assessment tools.

34 (4) Guidelines for collection of data.

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

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

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

10 (1) The percentage of individuals released pretrial.

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

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

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

18 (j) The _____ shall use the information reported by a county
19 pursuant to subdivision (i) to monitor the effectiveness of the
20 county's pretrial release policies, standards, and procedures and
21 to ensure compliance with the requirements of state law. In
22 monitoring effectiveness, the _____ shall compare the data
23 specified in subdivision (i) with available data on pretrial release
24 prior to the effective date of the act that added this section. The
25 _____ may work with the Board of State and Community
26 Corrections to revise the reporting plan described in subdivision
27 (i) as necessary to improve monitoring of pretrial release in the
28 state.

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

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

36 ~~SEC. 30.~~

37 *SEC. 31.* Section 1319 of the Penal Code is repealed.

38 ~~SEC. 31.~~

39 *SEC. 32.* Section 1319.5 of the Penal Code is repealed.

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1 ~~SEC. 32.~~

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

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