Administration of Justice Presentation Packet
Probation Business Managers Association Conference
Friday, October 12, 2018 · 10:00 am.
San Diego County, San Diego, California

1. Senate Bill 10 (Hertzberg): Bail Reform

2. SB 10 Prearraignment without Court Review Infographic : Prepared by Judicial Council (http://www.courts.ca.gov/documents/sb10-infographic-prearraignment.pdf)

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

4. SB 10 General Overview, Updated September 20, 2018: Prepared by Department of Finance (http://www.courts.ca.gov/documents/sb10-overview.pdf)

5. Mental Health Diversion Memorandum: Prepared by Judge Richard Couzens

6. Senate Bill 215 (Beall): Amended Mental Health Diversion

7. Senate Bill 1065 (Jones-Sawyer): Retail Theft

8. Realignment Funding Documents: CSAC

Senate Bill No. 10

CHAPTER 244

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

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

LEGISLATIVE COUNSEL'S DIGEST

SB 10, Hertzberg. Pretrial release or detention: pretrial services.

Existing law provides for the procedure of approving and accepting bail, and issuing an order for the appearance and release of an arrested person. Existing law requires that bail be set in a fixed amount and requires, in setting, reducing, or denying bail, a judge or magistrate to take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a hearing of the case. Under existing law, the magistrate or commissioner to whom the application is made is authorized to set bail in an amount that he or she deems sufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, and to set bail on the terms and conditions that he or she, in his or her discretion, deems appropriate, or he or she may authorize the defendant's release on his or her own recognizance. Existing law provides that a defendant being held for a misdemeanor offense is entitled to be released on his or her own recognizance, unless the court makes a finding on the record that an own recognizance release would compromise public safety or would not reasonably ensure the appearance of the defendant as required.

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

This bill would require, commencing October 1, 2019, persons arrested and detained to be subject to a pretrial risk assessment conducted by Pretrial Assessment Services, which the bill would define as an entity, division, or program that is assigned the responsibility to assess the risk level of persons charged with the commission of a crime, report the results of the risk determination to the court, and make recommendations for conditions of release of individuals pending adjudication of their criminal case. The bill would require the courts to establish pretrial assessment services, and would authorize the services to be performed by court employees or through a

contract with a local public agency, as specified. The bill would require, if no local agency will agree to perform the pretrial assessments, and if the court elects not to perform the assessments, that the court may contract with a new local pretrial assessment services agency established specifically to perform the role.

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

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

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

In cases in which the defendant is detained in custody, the bill would require a preventive detention hearing to be held no later than 3 court days after the motion for preventive detention is filed. The bill would grant the defendant the right to be represented by counsel at the preventive detention hearing and would require the court to appoint counsel if the defendant is financially unable to obtain representation. By imposing additional duties on county public defenders, this bill would impose a state-mandated local program. The bill would require the prosecutor to give the victim notice of the preventive detention hearing. By imposing new duties on local prosecutors, this bill would impose a state-mandated local program. The bill would create a rebuttable presumption that no condition of pretrial

supervision will reasonably assure public safety if, among other things, the crime was a violent felony or the defendant was convicted of a violent felony within the past 5 years. The bill would allow the court to order preventive detention of the defendant pending trial if the court determines by clear and convincing evidence that no condition or combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the defendant in court. If the court determines there is not a sufficient basis for detaining the defendant, the bill would require the court to release the defendant on his or her own recognizance or supervised own recognizance and impose the least restrictive nonmonetary conditions of pretrial release to reasonably assure public safety and the appearance of the defendant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Making recommendations to the court, including, but not limited to, presentence investigative reports pursuant to Sections 1203.7 and 1203.10 of the Penal Code, or reports prepared pursuant to Section 1320.15 of the Penal Code.

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

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

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

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

CHAPTER 1.5. PRETRIAL CUSTODY STATUS

Article 1. Definitions

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

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

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

(c) "Low risk" means that an arrested person, after determination of the person's risk following an investigation by Pretrial Assessment Services,

including the use of a validated risk assessment tool, is categorized as having a minimal level of risk of failure to appear in court as required or risk to public safety due to the commission of a new criminal offense while released on the current criminal offense.

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

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

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

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

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

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

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

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

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

Article 2. Book and Release

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

Article 3. Pretrial Assessment Services Investigation

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

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

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

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

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

(c) Prior to prearraignment review pursuant to subdivision (a) or (b) of Section 1320.10 or Section 1320.13, or prior to arraignment, Pretrial Assessment Services shall prepare a report containing information obtained in accordance with subdivisions (a) and (b), and any recommendations for

conditions of the person's release. Options for conditions of release shall be established by the Judicial Council and set forth in the California Rules of Court. A copy of the report shall be served on the court and counsel.

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

Article 4. Release by Pretrial Assessment Services

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

(b) Pretrial Assessment Services, using the information obtained pursuant to this section and Section 1320.9, and having assessed a person as having a low risk to public safety and low risk of failure to appear in court, shall release a low-risk person on his or her own recognizance, prior to arraignment, without review by the court, and with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the person's return to court. This subdivision does not apply to a person booked and released under Section 1320.8 or a person who is ineligible for consideration for release prior to arraignment as set forth in subdivision (e).

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

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

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

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

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

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

(A) A violation of Section 273.5.

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

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

(D) A violation of Section 646.9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Persons assessed as high risk.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 6. Release or Detention Determination at Arraignment

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

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

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

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

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

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

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

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

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

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

1320.17. At arraignment, the court shall order a defendant released on his or her own recognizance or supervised own recognizance with the least

restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the defendant's return to court unless the prosecution files a motion for preventive detention in accordance with Section 1320.18.

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

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

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

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

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

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

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

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

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

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

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

Article 7. Preventive Detention Hearing

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

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

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

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

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

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

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

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

(1) The current crime is a violent felony as defined in subdivision (c) of Section 667.5, or was a felony offense committed with violence against a person, threatened violence, or with a likelihood of serious bodily injury,

or one in which the defendant was personally armed with or personally used a deadly weapon or firearm in the commission of the crime, or was one in which he or she personally inflicted great bodily injury in the commission of the crime; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Any proposed plan of supervision.

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

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

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

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

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

(c) Upon request of the victim of the crime, the victim shall be given notice by the prosecution of the reopened preventive detention hearing. If

requested, the victim shall be given a reasonable opportunity to be heard on the matter of the defendant's custody status.

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

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

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

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

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

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

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

Article 8. Administrative Responsibilities of the Judicial Council

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

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

(2) Describe the elements of "validation," address the necessity and frequency of validation of risk assessment tools on local populations, and

address the identification and mitigation of any implicit bias in assessment instruments.

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

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

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

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

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

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

(A) Subdivision (b) of Section 1320.10.

(B) Subdivision (c) of Section 1320.10.

(C) Section 1320.12, disaggregated by risk level.

(D) Section 1320.13, disaggregated by risk level.

(3) Detained at:

(A) Arraignment, disaggregated by risk level.

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

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

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

(B) Have charges filed for a new crime.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If no qualified local agency will agree to perform this pretrial assessment function for a superior court, and the court elects not to perform

this function, the court may contract with a new local pretrial assessment services agency established to specifically perform this role.

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

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

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

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

(h) For the purposes of this section:

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

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

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

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

(C) Supervising offenders in the community.

(D) Employing peace officers.

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

(b) Upon appropriation by the Legislature, the Judicial Council shall allocate funds to local courts for Pretrial Assessment Services. Funds shall be allocated after consultation with key stakeholders, including court executives, representatives of employees, and the Chief Probation Officers of California. As determined by the Judicial Council, the allocation shall include a base amount to support pretrial assessment services across the state and additional funding based on appropriate criteria. The Judicial

Council shall consider regional variances in costs, pay scales, and other factors when making allocation determinations. The statewide allocation of the annual funding for pretrial services shall be adopted by the Judicial Council at a public meeting and shall be published publicly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 5. To the extent practicable, Judicial Council shall coordinate with the Chief Probation Officers of California to provide training efforts, conduct

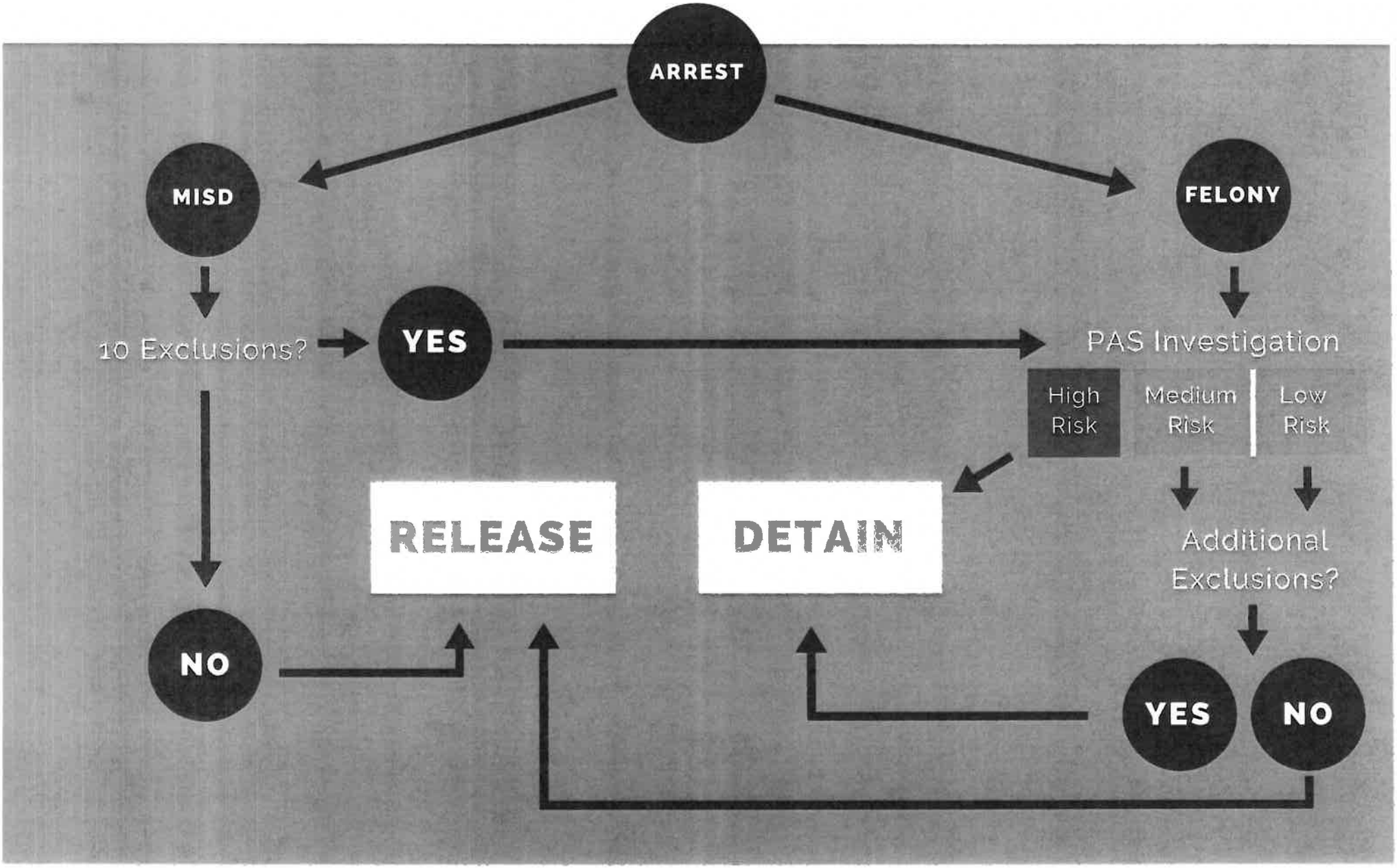
joint training, and otherwise collaborate in necessary startup functions to carry out this act.

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

O

SB 10 PREARRAIGNMENT

WITHOUT COURT REVIEW



PREARRAIGNMENT WITHOUT COURT REVIEW

PAS Investigation

PAS investigates within 24 hours of booking

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

10 Misdemeanor Exclusions

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

Low Risk

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

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

If YES to any exclusions, then detained until arraignment

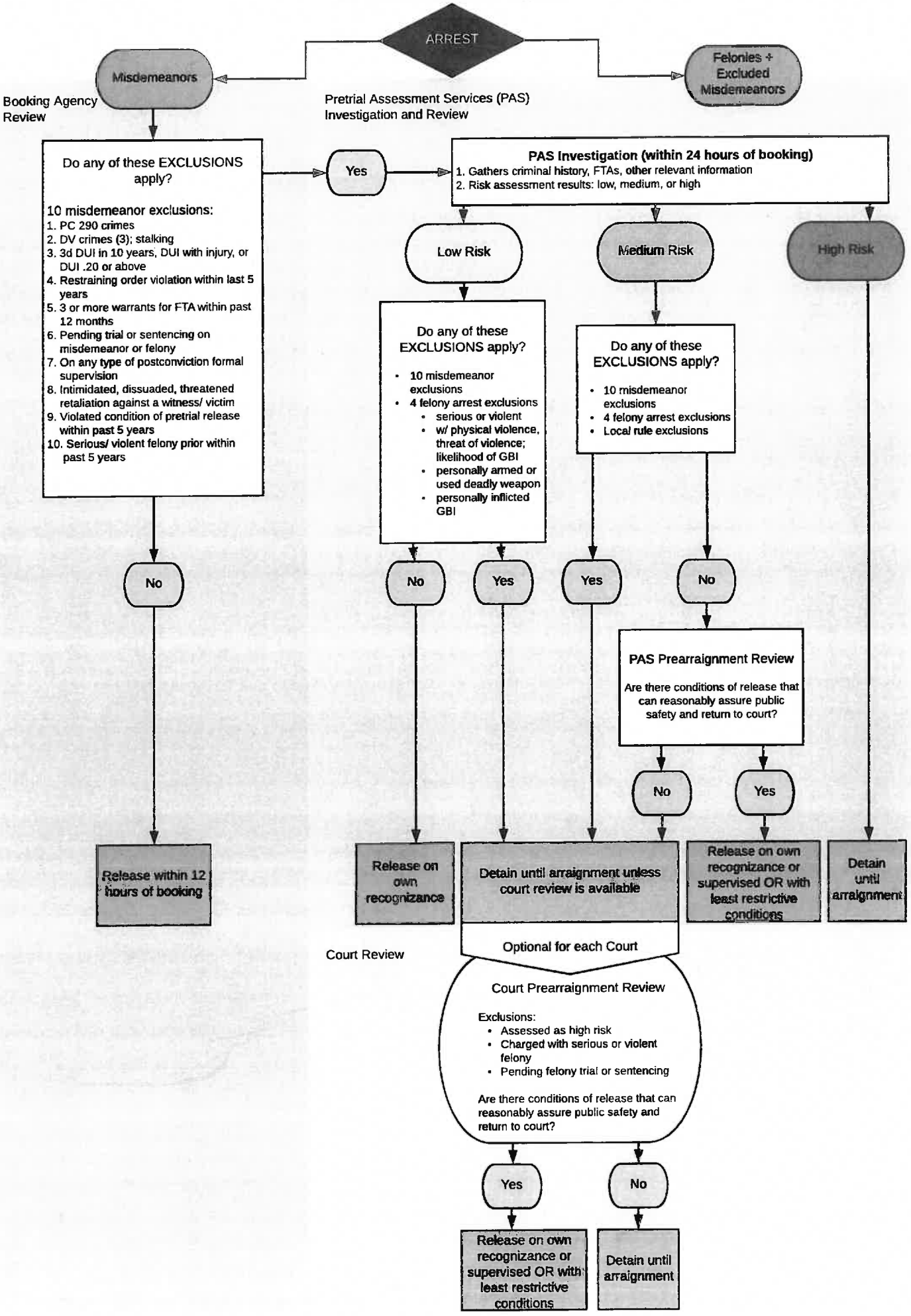
Medium Risk

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

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

If YES to any exclusions, then detained until arraignment

SB 10: PREARRAIGNMENT



SB 10 General Overview, Updated September 20, 2018

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

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

Release and Detention Process Summary

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

Components of the Legislation

1. Eliminates money bail effective October 1, 2019.

2. Components of the Risk-Based System:

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

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

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

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

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

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

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

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

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

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

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

3. Standards for Release and Detention

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

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

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

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

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

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

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

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

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

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

5. Structure

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

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

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

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

6. Funding

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

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

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

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

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

SB 1054 is pending legislation before the Governor for his action.

If signed, the release prohibitions outlined would be expanded to additionally include persons arrested for an offense listed in Penal Code Section 290.

MEMORANDUM

FROM: **J. RICHARD COUZENS**
Judge of the Placer County Superior Court (Ret.)

DATED: July 13, 2018

RE: **MENTAL HEALTH DIVERSION (PENAL CODE §§ 1001.35-1001.36)(AB 1810)**

AB 1810, an omnibus mental health bill, was signed by the governor on June 27, 2018, as a budget trailer bill; it became effective on signing. The legislation includes the addition of Penal Code[1] sections 1001.35 and 1001.36[2] for the discretionary diversion of qualified persons who have committed a crime because of a mental disorder. This memorandum will provide a review of the new diversion procedures and related legislation as it currently exists.

I. Crimes eligible for diversion

All crimes, felony or misdemeanor, are potentially eligible for diversion. (§ 1001.36, subd. (a).)

II. When diversion may be granted

Diversion may be granted at any time after the filing of an accusatory pleading: "On an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court may, after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section. . . ." (§ 1001.36, subd. (a).) "Pretrial diversion" "means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment. . . ." (§ 1001.36, subd. (c).) It seems clear the statute was drafted to permit pre-plea diversion of the defendant. The phrase "until adjudicated" appears to indicate there is no ability to request diversion once the defendant has been found to have committed the crime, whether by plea or verdict.

The diversion program is not dependent on whether the defendant is competent to stand trial. Neither counsel nor the court are required to make a declaration or

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[1] Unless otherwise indicated, all further statutory references are to the Penal Code.
[2] The full text of sections 1001.35 and 1001.36 is set forth in Attachment A.

finding as to incompetence before the diversion process may be initiated. The purpose of the program is not to secure the defendant's trial competency, but to offer treatment for an underlying mental disorder. However, sections 1370, subdivision (a)(1)(B)(iv) and 1370.01, subdivision (a)(2), permit the court to place an incompetent defendant on diversion if deemed "suitable."[3]

III. Persons eligible for diversion

Discretion of the court

Diversion is a discretionary disposition available to the court and defendant if certain requirements are met. "On an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court *may, after considering the positions of the defense and prosecution, grant pretrial diversion* to a defendant pursuant to this section. . . ." (§ 1001.36, subd. (a); emphasis added.) "Pretrial diversion *may be granted pursuant to this section* if all of the following criteria are met. . . ." (§ 1001.36, subd. (b); emphasis added.)

"Ordinarily, the word 'may' connotes a discretionary or permissive act; the word 'shall' connotes a mandatory or directory duty. This distinction is particularly acute when both words are used in the same statute." (*Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 432; footnotes omitted.) In enacting section 1001.36, the Legislature appears to understand this distinction. When addressing the authority of the court to grant diversion, the statute uses the permissive "may." (See, *e.g.*, §§ 1001.36, subd. (a) and (b).) When addressing the court's duty upon the defendant's successful completion of diversion, the statute uses the directory "*shall* dismiss the defendant's criminal charges." (§ 1001.36, subd. (e); emphasis added.) Section 1001.36, subdivision (h), expressly acknowledges the discretionary nature of the court's decision: "when determining whether to *exercise its discretion to grant diversion* under this section, a court may consider previous records of participation in diversion under this section." (Emphasis added.) Finally, the court having full discretion to grant diversion appears consistent with a stated purpose of the act to give local discretion for the creation and implementation of a diversion program: "The purpose of this chapter is to promote all of the following: . . . Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings." (§ 1001.35, subd. (b).)

Accordingly, it seems clear the court can grant diversion if the minimum standards are met, and, correspondingly, can refuse to grant diversion even though the defendant meets the technical requirements of the program.

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[3] For a full discussion of the placement of incompetent persons on diversion, see Section VII, *infra*.

There may be times, because of the defendant's circumstances, where the interests of justice do not support diversion of the case. The defendant's criminal or mental health history may reflect a substantial risk the defendant will commit dangerous crimes beyond the "super strikes" identified in section 1001.36, subdivision (b)(6). It may be that because of the defendant's level of disability there is no reasonably available and suitable treatment program for the defendant. The defendant's treatment history may indicate the prospect of successfully completing a program is quite poor. Conduct in prior diversion programs may indicate defendant is now unsuitable. (See § 1001.36, subd. (h) [the court may consider past performance on diversion in determining suitability].) The court may consider the defendant and the community will be better served by the regimen of mental health court. (See §1001.36, subd. (c)(1)(B) [the court may consider interests of the community in selecting a program].) Clearly the court is not limited to excluding persons only because of the risk of committing a "super strike" – the right to exclude because of dangerousness goes well beyond that limited list. In short, the court may consider *any* factor relevant to whether the defendant is suitable for diversion.

Burden of establishing eligibility

Because the ability to participate in diversion is not a matter of statutory right, but a matter of discretion with the court, it seems likely the defendant will carry the burdens of proof and persuasion regarding eligibility and suitability for diversion. Diversion under section 1001.36 is quite different than the qualified "right" to resentencing and reclassification in Propositions 36 and 47, which, depending on the issue, have shifting burdens of proof. (See, generally, *People v. Romanowski* (2017) 2 Cal.5th 903, 916 [Proposition 47 – defendant has burden of proof of eligibility]; *People v. Frierson* (2017) 4 Cal.5th 225, 239 [Proposition 36 – People have burden of proof of dangerousness].)

***Prima facie* determination of eligibility**

It is suggested that when the defendant requests mental health diversion, the court conduct a hearing to determine whether the defendant can offer a *prima facie* basis for diversion.[4] At that time the court can receive information about the crime, the defendant's criminal and mental health history, and potential treatment options. If the defendant demonstrates the crime is generally suitable for diversion and the defendant has at least an arguable chance of meeting the other requirements for diversion, the court may proceed with appointment of any necessary experts and exploration of placement options. On the other hand, if the case is unsuitable for diversion, even assuming the defendant would otherwise qualify, the court could deny the request without further incurring unnecessary time and expense in obtaining forensic evaluations.

[4] For a complete outline of the suggested procedure for granting diversion, see Attachment B

It is suggested that this hearing be informal in nature, with counsel making offers of proof as to the details of the offense and the defendant's criminal and mental health history. It would seem entirely appropriate to consider "reliable hearsay." Indeed, sections 1001.36, subd. (b)(1) and (2), contemplate the use of such evidence by permitting the court to consider police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, and records or reports by qualified medical experts.

Requirements for diversion

The court may grant diversion if **all** of the following requirements are met:

A. **"The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders** [currently the DSM V], including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, **but excluding** antisocial personality disorder, borderline personality disorder, and pedophilia." (§ 1001.36, subd. (b)(1); emphasis added.) Accordingly, while the statute permits diversion based on nearly every mental disorder, it expressly excludes persons who are diagnosed with antisocial personality disorder, borderline personality disorder, and pedophilia.

The DSM V also includes as a mental disorder certain developmental disabilities such as autism, neurocognitive disorder due to traumatic brain injury, and intellectual disability (intellectual developmental disorder). Even if a particular developmental disability is not included in the DSM V definition of mental disorder, it would seem that persons suffering from a recognized disorder caused by the developmental disability also would be entitled to diversion.

The defense is directed to provide evidence of the disorder, which must include a diagnosis by a "qualified mental health expert." There are three points to observe about this requirement. First, "qualified mental health expert" is not further defined in the statute. Likely the intent of the legislation is to allow the court to determine in any particular circumstance whether a person is qualified to express an opinion on the defendant's diagnosis.[5]

Second, the statue only requires a "recent diagnosis" of the disorder. Depending on the defendant's circumstances, the diagnosis could come from a psychiatrist or psychologist in a full report ordered by the court, or it could come from recent medical records regarding the defendant's mental health treatment. If after the

[5] It seems unlikely the expert must meet the standards set forth in section 1369, subdivision (h); if it had wanted that level of expertise, the Legislature could have said so.

preliminary review of the *prima facie* basis for granting diversion the court determines it is appropriate to proceed with diversion, the court should explore the availability of relevant information regarding the defendant's diagnosis and the other requirements of eligibility before ordering an expensive and time-consuming full psychological report. Particularly if the defendant is engaged in on-going treatment, any number of persons engaged in the defendant's treatment would likely be qualified to render an opinion as to the defendant's diagnosis and the other issues to be addressed by the court.

Third, it is unlikely section 1001.36, subdivision (b)(1), should be read as limiting the diagnosis to the one offered by the defense expert. The provision establishes a duty of disclosure by the defense, not a limitation on what the court may consider. The prosecution would not be precluded from having its own expert examine the defendant. (See § 1054.3, subd. (b)(1); see also *Sharp v. Superior Court* (2012) 54 Cal.4th 168, 173-174 [interpreting section 1054.3(b)(1)].) Furthermore, nothing precludes the court from appointing its own expert pursuant to Evidence Code, section 730.

In reaching an opinion as to whether the defendant has a qualifying disorder, the expert is expressly permitted to consider "the defendant's medical records, arrest reports, or any other relevant evidence." (§ 1001.36, subd. (b)(1).)

B. **"The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense."** (§ 1001.36, subd. (b)(2).) "A court may conclude that a defendant's mental disorder played a significant role in the commission of the charged offense if . . . the court concludes that the defendant's mental disorder substantially contributed to the defendant's involvement in the commission of the offense." (*Id.*) In reaching its conclusion on this requirement, the court is permitted to consider "any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense. . . ." (*Id.*)

C. **"In the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment."** (§ 1001.36, subd. (b)(3).)

D. **The defendant consents to diversion and waives the right to a speedy trial.** (§ 1001.36, subd. (b)(4). The only exception to this requirement is when the defendant has actually been found incompetent and suitable for diversion under sections 1370, subdivision (a)(1)(B)(iv), or 1370.01, subdivision (a)(2). In such circumstances the defendant is not competent to consent to diversion or waive

the right to a speedy trial. (§ 1001.36, subd. (b)(4).) For a discussion of diversion of persons who are incompetent to stand trial, see Section VII, *infra*.

E. **"The defendant agrees to comply with treatment as a condition of diversion."** (§ 1001.36, subd. (b)(5).)

F. **"The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community."** (§ 1001.36, subd. (b)(6).) In determining dangerousness, "[t]he court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate." (*Id.*)

The reference to section 1170.18 incorporates the definition of "unreasonable risk of danger to public safety" contained in Proposition 47: "'Unreasonable risk of danger to public safety' means an unreasonable risk that the [defendant] will commit a new violent felony within the meaning of" section 667(e)(2)(C)(iv)." (§ 1170.18, subd. (c).)

In considering this factor, the court must determine whether there is an unreasonable risk the defendant will commit one of the "super strikes," not whether there is an unreasonable risk that the defendant will commit other serious or violent felonies such as a robbery, kidnapping or arson. (For a complete table of the listed violent felonies, see Attachment C.)

Specifically, the court must determine whether there is an unreasonable risk that the defendant will commit any of the following offenses:

> (a) A "sexually violent offense" as defined in Welfare and Institutions Code, section 6600(b) [Sexually Violent Predator Law]: " 'Sexually violent offense' means the following acts when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as defined in subdivision (a): a felony violation of Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5, or 289 of the Penal Code, or any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code."
>
> (b) Oral copulation under section 288a, sodomy under section 286, or sexual penetration under section 289, if these offenses are committed

with a person who is under 14 years of age, and who is more than 10 years younger than the defendant.

(c) A lewd or lascivious act involving a child under 14 years of age, in violation of section 288.

(d) Any homicide offense, including any attempted homicide offense, defined in sections 187 to 191.5, inclusive. Potential conviction for voluntary manslaughter under section 192, subdivision (a), involuntary manslaughter under section 192, subdivision (b), and vehicular manslaughter under section 192, subdivision (c), are not "super strikes."

As noted, the determination of dangerousness includes the potential of committing gross vehicular manslaughter while intoxicated, in violation of section 191.5, subdivision (a). In that regard, likely the court will be able to consider the person's history of substance abuse and driving as it relates to the person's potential of killing someone while operating a vehicle while under the influence of alcohol or drugs.

(e) Solicitation to commit murder as defined in section 653f.

(f) Assault with a machine gun on a peace officer or firefighter, as defined in section 245, subdivision (d)(3).

(g) Possession of a weapon of mass destruction, as defined in section 11418, subdivision (a)(1).

(h) Any serious or violent offense punishable in California by life imprisonment or death.

G. **"The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant."** (§ 1001.36, subd. (c)(1)(A).) Although this requirement is listed as part of the definition of "pretrial diversion" in subdivision (c), the identification of a suitable program clearly is a prerequisite to the court granting diversion. Certainly one of the principal purposes of diversion is to treat the defendant sufficiently that he does not commit further crimes. Even though the court may be unable to find the defendant likely to commit a "super strike" if treated in the community as discussed above, the court must nevertheless be satisfied the program will address the needs of the defendant to prevent the commission of *any* serious crime because of the mental disorder. If the court cannot identify a program that will meet the "specialized mental health treatment needs of the defendant," diversion cannot be granted. Finally, even if

a suitable program is identified, the program must be willing to accept the defendant.

Need for a psychological report

The need of a report arises, if at all, in the determination of eligibility for diversion under section 1001.36, subdivision (b)(1), and when diversion is terminated for a person previously declared incompetent to stand trial under section 1370, subdivision (a)(1)(B)(v). Note that the statue only requires a "recent diagnosis" of the disorder. Depending on the defendant's circumstances, the diagnosis could come from a psychiatrist or psychologist in a full report ordered by the court, or it could come from recent medical records regarding the defendant's mental health treatment. If after the preliminary review of the *prima facie* basis for granting diversion the court determines it is appropriate to proceed with diversion, the court should explore the availability of relevant information regarding the defendant's diagnosis and the other requirements of eligibility before ordering an expensive and time-consuming full psychological report. Particularly if the defendant is engaged in on-going treatment, any number of persons engaged in the defendant's treatment would likely be qualified to render an opinion as to the defendant's diagnosis and the other issues to be addressed by the court.

While the defendant has an initial burden to supply evidence of a mental disorder, including a recent diagnosis from a mental health professional, it appears the substance of a report, if one is needed, can be of assistance to the court in determining four of the six eligibility requirements for diversion noted above. While the report in some instances will be helpful to the defendant, its primary purpose is to assist the court in making its decision to grant or terminate diversion.

Responsibility for the cost of psychological reports

Given that the report, if ordered, is for the court's needs and the court's own use, the court has the duty to pay for the reports under Rule 10.810, subdivision (d), Function 10, as part of "court operations" (Gov. Code § 77200). Similarly, the court has the obligation to pay for reports requested by the court pursuant to Evidence Code, section 730. It is unlikely the court has the obligation to pay for reports requested by the prosecution.

The responsibility for the payment of forensic evaluations was discussed at length in an Opinion of the California Attorney General. The opinion concluded, except in limited circumstances, the court generally is responsible for the cost of the reports utilized by the courts in criminal proceedings. "[T]he state is obligated to pay the costs of '[c]ourt-appointed expert witness fees (for the court's needs)' and 'court-ordered forensic evaluations and other professional services (for the court's own

use).' ([Cal. Rules of Court,] Rule 810[6], subd. (d), Function 10.)" (Ops. Cal. Atty Gen. No. 03-902, p. 4 (2004).)

Not all courts agree with the attorney general's opinion. At least one court has taken the position that since it is the defendant's burden to establish eligibility for diversion, the defendant bears the financial burden of addressing the medical issues identified in sections 1001.36, subd. (b)(1), (b)(2), (b)(3), and (b)(6).

IV. Program requirements

The mental health treatment program must meet the following requirements:

A. **"The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant."** (§ 1001.36, subd. (c)(1)(A).)

B. **The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources.** (§ 1001.36, subd. (c)(1)(B).) "Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services." (*Id.*) The statute gives the court broad discretion in the selection of the specific program of diversion for the defendant. Nothing in the legislation requires a court or county to create a mental health program for the purposes of diversion. Furthermore, even if a county has existing mental health programs suitable for diversion, the particular program selected by the court must give its consent to receive the defendant for treatment.

C. **The program must submit regular reports to the court and counsel regarding the defendant's progress in treatment.** (§ 1001.36, subd. (c)(2).) Nothing in the statute indicates the specific frequency of the reports. For persons committed to a residential program for restoration of competency, for example, there is an initial 90-day report, then a progress report every six months thereafter (§ 1370, subd. (b)(1).) See also section 1605, subdivision (d),which requires a progress report every 90 days for a person on outpatient treatment. There should be a final report calculated to correspond with the anticipated termination of the defendant's program in two years. The final report should address the

[6] This rule was renumbered as Cal. Rules of Court, rule 10.810, but the content is identical to the old rule.

defendant's overall performance in the program and any long-term plans for mental health care. (See § 1001.36, subd. (e).)

D. **The diversion program is to last no longer than two years.** (§ 1001.36, subd. (c)(3).)

V. Termination or modification of treatment

If any of the following circumstances occur, the court is directed to hold a hearing to determine whether criminal proceedings should be reinstated, whether treatment should be modified, or whether the defendant should be referred for conservatorship proceedings in accordance with Welfare and Institutions Code, sections 5350, *et seq*. (§ 1001.36, subd. (d).) The court is to give notice to the defendant and counsel. Nothing in the statute precludes either party from requesting the hearing.

A. The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence. (§ 1001.36, subd. (d)(1).)

B. The defendant is charged with an additional felony allegedly committed during the pretrial diversion. (§ 1001.36, subd. (d)(2).)

C. The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion. (§ 1001.36, subd. (d)(3).)

D. Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exist: (§ 1001.36, subd. (d)(4).)

1. The defendant is performing unsatisfactorily in the assigned program. (§ 1001.36, subd. (d)(4)(A).)

2. The defendant is gravely disabled, as defined in Welfare and Institutions Code, section 5008, subdivision (h)(1)(B). A defendant may only be conserved and referred to the conservatorship investigator pursuant to this finding. (§ 1001.36, subd. (d)(4)(B).)

Section 1001.36, subdivision (i), provides full access to the defendant's records of treatment during diversion: "The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the

defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship."

If criminal proceedings are reinstated, it still may be necessary for the court to address traditional competency issues. The defendant's treatment received during diversion is not primarily designed to restore trial competence. Depending on the procedural posture of the case when the defendant requested diversion, it may be necessary for the court or defense counsel to declare a doubt as to the defendant's competency to stand trial and pursue the traditional process for these individuals. (See §§ 1368, *et seq.*) It also seems clear that if the defendant does regain trial competence during diversion, that fact has no bearing on whether the defendant is entitled to continue on diversion and, if the program is successfully completed, obtain a dismissal of the criminal charges. (See next section.)

VI. Successful completion of diversion

Dismissal of criminal charges

"If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion." (§ 1001.36, subd. (e).) Whether the defendant has performed "satisfactorily" on diversion is a matter left to the discretion of the court. However, the court *may* conclude the defendant has performed satisfactorily if:

- The defendant has "substantially complied" with the program requirements.
- The defendant has "avoided significant new violations of law *unrelated* to the defendant's mental health condition." (Emphasis added.) The statute gives the court authority to ignore new law violations that are *related* to the defendant's mental disorder. The court is not required to do so.
- The defendant has "a plan in place for long-term mental health care."

Duties of the court

If the court dismisses the charges, the clerk must notify the Department of Justice of the dismissal pursuant to this section. (§ 1001.36, subd. (e).)

The court must order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (g) and (h). (§ 1001.36, subd. (e).)

Section 1001.36, subdivision (g), provides that "the defendant shall be advised that, regardless of his or her completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (f), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92."

Section 1001.36, subdivision (h), provides that "a finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution." Article I, Section 28, subdivision (f)(2), the "Right to Truth in Evidence", provides in part that "relevant evidence shall not be excluded in any criminal proceeding, including pretrial and postconviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court."

Section 1001.36, subdivision (h), further provides "when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section."

What the defendant may disclose

"Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred. . . . The defendant who successfully completes diversion may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (g)." (§ 1001.36, subd. (e).)

VII. Persons incompetent to stand trial

The provision permitting diversion of persons found incompetent to stand trial are found in sections 1370, subdivision (a)(1)(B) and 1370.01, subdivision (a)(2).[7]

[7] The full statutory provisions of sections 1370, subdivision (a)(1)(B) and 1370.01, subdivision (a)(2), are set forth in Attachment A.

Eligibility for diversion - felony

Even though a defendant has been found incompetent to stand trial, the defendant may be diverted as provided in section 1001.36 if the defendant has not been "transported to a facility" pursuant to section 1370, the court has been provided with "any information that the defendant may benefit from diversion," and the court finds the defendant is "an appropriate candidate for diversion." (§ 1370, subd. (a)(1)(B)(iv).) Like section 1001.36, the transfer of a person not competent to stand trial to diversion is a matter of discretion by the court: "the court *may* make a finding that the defendant is an appropriate candidate for diversion." (Emphasis added.) Determining whether a person is an "appropriate candidate" for diversion undoubtedly includes issues discussed in Section III, above.

"Transported to a facility" likely means a facility as described in section 1370, subdivision (a)(1)(B)(i): "The court shall order that the mentally incompetent defendant be delivered by the sheriff to a State Department of State Hospitals facility, as defined in Section 4100 of the Welfare and Institutions Code, for the care and treatment of the mentally disordered, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility, including a community-based residential treatment system established pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence. . . ." "Treatment facility" includes jail based competency treatment programs. Such programs are identified in Welfare and Institutions Code, section 4100, subdivision (g): "The department [of State Hospitals] has jurisdiction over the following facilities: . . . A county jail treatment facility under contract with the State Department of State Hospitals to provide competency restoration services."

Accordingly, persons adjudicated as incompetent to stand trial for a felony and physically placed in a treatment facility are ineligible for diversion.

Eligibility for diversion - misdemeanor

Section 1370.01, subdivision (a)(2), provides similar provisions for diversion of misdemeanor offenses. Eligibility is determined in accordance with section 1001.36. Unlike the felony provisions, diversion of a person charged with a misdemeanor violation apparently need not occur prior to the defendant being transported to a treatment facility. Persons placed in a jail-based competency program, for example, still may be eligible for diversion.

Procedures by the court

If a defendant is found by the court to be an appropriate candidate for diversion, the defendant's eligibility is be determined pursuant to section 1001.36. (§§ 1370, subd. (a)(1)(B)(v), 1370, subd. (a)(2).) Although not expressly provided by statute, if the defendant is deemed unsuitable or ineligible for diversion, the defendant presumably would be returned to the point in the competency proceedings when first referred for diversion.

A defendant granted felony diversion may participate for the lesser of the period specified in section 1370, subdivision (c)(1), the normal period for restoration of competency, or two years. The period of diversion of a misdemeanor is not to exceed one year as provided in section 1370.01(c)(1).

If, during the treatment period for a felony, the court determines that criminal proceedings should be reinstated pursuant to section 1001.36, subdivision (d), the court must, pursuant to Section 1369, appoint a psychiatrist, licensed psychologist, or any other expert the court may deem appropriate, to determine the defendant's competence to stand trial. (§ 1370, subd. (a)(1)(B)(v).) Although the provisions governing diversion of misdemeanors do not include a specific reference to reinstatement under section 1001.36, subdivision (d), presumably the same procedure will be used. Although not expressly provided by statute, if the defendant is terminated from diversion and criminal proceedings are reinstituted, the defendant presumably would be returned to the point in the competency proceedings when diversion was first requested. If the defendant is determined to be competent to stand trial and is terminated from diversion pursuant to section 1001.36, subdivision (d), the defendant will be reinstated to the full criminal trial process. If the defendant is determined to be incompetent to stand trial, and is terminated from diversion, the normal restoration procedures provided by sections 1370 and 1370.01 will apply.

If the defendant successfully completes diversion, the defendant will be entitled to a dismissal of the charges pursuant to section 1001.36, subdivision (e), and the "defendant shall no longer be deemed incompetent to stand trial pursuant to this section." (§§ 1370, subd. (a)(1)(B)(vi), 1370.01, subd. (a)(2).)

Nothing in sections 1370 and 1370.01 connect continuance on diversion with the defendant's competence. Accordingly, even though the defendant regains trial competence during diversion, the defendant is entitled to remain in the program so long as criminal proceedings are not reinstituted pursuant to section 1001.36, subdivision (d).

VIII. Funding for diversion

SB 840, the Budget Act of 2018, appropriated $100 million to the Department of State Hospitals for support of county mental health diversion programs.

ATTACHMENT A: PENAL CODE §§ 1001.35, 1001.36, 1370, and 1370.01

1001.35.

The purpose of this chapter is to promote all of the following:

(a) Increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety.

(b) Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings.

(c) Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders.

1001.36.

(a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court may, after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant meets all of the requirements specified in subdivision (b).

(b) Pretrial diversion may be granted pursuant to this section if all of the following criteria are met:

(1) The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a recent diagnosis by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense. A court may conclude that a defendant's mental disorder played a significant role in the commission of the charged offense if, after reviewing any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense, the court concludes that the defendant's mental disorder substantially contributed to the defendant's involvement in the commission of the offense.

(3) In the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment.

(4) The defendant consents to diversion and waives his or her right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iv) of subparagraph (B) paragraph (1) of subdivision (a) of Section 1370 and, as a result of his or her mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of his or her right to a speedy trial.

(5) The defendant agrees to comply with treatment as a condition of diversion.

(6) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(c) As used in this chapter, "pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(1) (A) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(B) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(2) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(3) The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years.

(d) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(e) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (g) and (h). The defendant who successfully completes diversion may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (g).

(f) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(g) The defendant shall be advised that, regardless of his or her completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (f), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(h) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(i) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

1370, subdivisions (a)(1)(B)(iv)-(vi)

(iv) If, at any time after the court finds that the defendant is mentally incompetent and before the defendant is transported to a facility pursuant to this section, the court is provided with any information that the defendant may benefit from diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, the court may make a finding that the defendant is an appropriate candidate for diversion.

(v) If a defendant is found by the court to be an appropriate candidate for diversion pursuant to clause (iv), the defendant's eligibility shall be determined pursuant to Section 1001.36. A defendant granted diversion may participate for the lesser of the period specified in paragraph (1) of subdivision (c) or two years. If, during that period, the court determines that criminal proceedings should be reinstated pursuant to subdivision (d) of Section 1001.36, the court shall, pursuant to Section 1369, appoint a psychiatrist, licensed psychologist, or any other expert the court may deem appropriate, to determine the defendant's competence to stand trial.

(vi) Upon the dismissal of charges at the conclusion of the period of diversion, pursuant to subdivision (e) of Section 1001.36, a defendant shall no longer be deemed incompetent to stand trial pursuant to this section.

1370.01, subdivision (a)(2)

(2) If the defendant is found mentally incompetent, the court may make a finding that the defendant is an appropriate candidate for diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and may, if the defendant is eligible pursuant to Section 1001.36, grant diversion for a period not to exceed that set forth in paragraph (1) of subdivision (c). Upon the dismissal of charges at the conclusion of the period of diversion, pursuant to subdivision (e) of Section 1001.36, a defendant shall no longer be deemed incompetent to stand trial pursuant to this section.

ATTACHMENT B: PROCEDURAL CHECKLIST FOR MENTAL HEALTH DIVERSION (P.C. §§ 1001.35 AND 1001.36)

I. DEFENDANT REQUESTS DIVERSION

A. Determine *prima facie* basis for diversion

1. Informal hearing to review facts of crime, defendant's criminal and mental health history
    a. Is request timely – between filing of complaint and adjudication
    b. Does defendant have reasonable chance at meeting requirements in Section II, *infra*
    c. Is the defendant and/or crime reasonably suitable for diversion
2. Court to consider offers of proof and reliable hearsay
3. If *prima facie* basis not established, deny request and continue with criminal case
4. If *prima facie* basis is established, proceed to full determination of eligibility, suitability and placement

II. DETERMINATION OF ELIGIBILITY

To be eligible for diversion, **ALL** of the following requirements must be met:

A. **"The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders**, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, **but excluding** antisocial personality disorder, borderline personality disorder, and pedophilia." (§ 1001.36, subd. (b)(1).)

1. Has defendant submitted evidence of a mental disorder
2. Court to order any additional reports as needed

B. **"The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense."** (§ 1001.36, subd. (b)(2).)

C. **"In the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment."** (§ 1001.36, subd. (b)(3).)

D. **The defendant consents to diversion and waives the right to a speedy trial.** (§ 1001.36, subd. (b)(4).

E. **"The defendant agrees to comply with treatment as a condition of diversion."** (§ 1001.36, subd. (b)(5).)

F. **"The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community."** (§ 1001.36, subd. (b)(6).)

G. **"The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant."** (§ 1001.36, subd. (c)(1)(A).)

III. PROGRAM REQUIREMENTS

The program selected by the court must meet the following requirements:

A. **"The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant."** (§ 1001.36, subd. (c)(1)(A).)

B. **The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources.** (§ 1001.36, subd. (c)(1)(B).)

1. Has the program agreed to accept the defendant on diversion

C. **The program must submit regular reports to the court and counsel regarding the defendant's progress in treatment.** (§ 1001.36, subd. (c)(2).)

1. Set the frequency of the reports
2. Set final report near end of diversion period to determine:
    a. Whether defendant has substantially complied with treatment program
    b. Whether defendant has committed any new law violations, and whether the violations were related or unrelated to defendant's mental disorder
    c. Whether defendant has a long-term plan for mental health care

D. **The diversion program is to last no longer than two years.** (§ 1001.36, subd. (c)(3).)

IV. TERMINATION OR MODIFICATION OF TREATMENT

Termination of diversion and reinstatement of criminal proceedings, modification of treatment, or referral for conservatorship may occur after noticed hearing if:

A. The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence. (§ 1001.36, subd. (d)(1).)

B. The defendant is charged with an additional felony allegedly committed during the pretrial diversion. (§ 1001.36, subd. (d)(2).)

C. The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion. (§ 1001.36, subd. (d)(3).)

D. Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists: (§ 1001.36, subd. (d)(4).)

   1. The defendant is performing unsatisfactorily in the assigned program. (§ 1001.36, subd. (d)(4)(A).)

   2. The defendant is gravely disabled, as defined in Welfare and Institutions Code, section 5008, subdivision (h)(1)(B). A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding. (§ 1001.36, subd. (d)(4)(B).)

E. If diversion terminated, consider status of defendant's competence to stand trial and whether to commence or continue proceedings under §§ 1368, *et seq.*

V. SUCCESSFUL COMPLETION OF DIVERSION

If the defendant has performed satisfactorily on diversion, the court must dismiss the criminal charges. (§ 1001.36, subd. (e).) The court *may* conclude the defendant performed satisfactorily if:

A. The defendant has "substantially complied" with the program requirements

B. The defendant has "avoided significant new violations of law *unrelated* to the defendant's mental health condition." (Emphasis added.) The court can, in its discretion, ignore new violations of law related to the defendant's mental health condition.

C. The defendant has "a plan in place for long-term mental health care"

D. Duties of the court if case dismissed:

1. Clerk to notify Dept. of Justice of disposition
2. Court to order access to records of arrest restricted per § 1001.9
3. Court to advise defendant:
    a. The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (f), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.
    b. An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92."

VI. PERSONS INCOMPETENT TO STAND TRIAL

A. Persons charged with felony and found incompetent to stand trial are eligible for diversion if:

1. Person not transported to a mental health facility
2. Court receives information that defendant may benefit from diversion
3. Court determines defendant appropriate for diversion
4. Two year maximum program

B. Persons charged with misdemeanor and found incompetent to stand trial are eligible for diversion if:

1. Court determines appropriate for diversion
2. One year maximum program

C. Consider whether defendant appropriate for diversion considering all relevant factors

1. If not appropriate, resume criminal proceedings
2. If appropriate, determine eligibility in accordance with § 1001.36

D. If diversion terminated under § 1001.36, subdivision (d):

1. Appoint mental health expert to determine status of competency
2. If not competent, resume procedures under §§ 1368, *et seq.*
3. If competent, resume full criminal proceedings

E. If diversion successfully completed
   1. Dismiss criminal charges
   2. Court to follow duties in Section V (D), *supra*.

ATTACHMENT C: Offenses listed in P.C. § 667(e)(2)(C)(iv)

The following table was prepared by Hon. John "Jack" Ryan, Orange County Superior Court (Ret.)

TABLE OF CRIMES LISTED IN P.C. § 667(e)(2)(C)(iv) – "Super Strikes"

Prior Conviction	*Description*	*Pen C Sections*
Any Serious or Violent Felony	Punishable in California by life imprisonment or death.	667(e)(2)C)(iv)(VIII)
187	Murder or attempt. (Any homicide or attempt from 187 to 191.5	667(e)(2)C)(iv)(IV)
191.5	Vehicular manslaughter while intoxicated or attempt.	667(e)(2)C)(iv)(IV)
207	Kidnap to ... §261, 262, 264.1, 286, 288, 288a, or 289. (Kidnap, as defined in Pen C §207 does not include attempts to commit a defined sex offense.)	667(e)(2)C)(iv)(I)
209	Kidnap to violate §261, 262, 264.1, 286, 288, 288a, or 289.	667(e)(2)C)(iv)(I)
220	Assault to violate 261, 262, 264.1, 286, 288, 288a, or 289. (Pen C § 220 specifies *rape* as a designated offense. It does not use a section number, 261 (rape) or 262 (spousal rape).	667(e)(2)C)(iv)(I)
245(d)(3)	Assault with a machine gun on a peace officer or firefighter	667(e)(2)C)(iv)(VI)
261(a)(2)	Rape by force.	667(e)(2)C)(iv)(I)
261(a)(6)	Rape by threat to retaliate.	667(e)(2)C)(iv)(I)
262(a)(2)	Spousal rape by force.	667(e)(2)C)(iv)(I)
262(a)(4)	Spousal rape by threat to retaliate.	667(e)(2)C)(iv)(I)
264.1	Rape in concert by force or violence	667(e)(2)C)(iv)(I)
269	Aggravated sexual assault of a child.	667(e)(2)C)(iv)(I)
286(c)(1)	Sodomy with child <14 + 10 years age differential.	667(e)(2)C)(iv)(II)
286(c)(2)(A)	Sodomy by force.	667(e)(2)C)(iv)(I)
286(c)(2)(B)	Sodomy by force upon child <14	667(e)(2)C)(iv)(I)
286(c)(2)(C)	Sodomy by force upon child >14	667(e)(2)C)(iv)(I)
286(c)(3)	Sodomy with threat to retaliate	667(e)(2)C)(iv)(I)
286(d)(1)	Sodomy in concert by force...., threat to retaliate.	667(e)(2)C)(iv)(I)
286(d)(2)	Sodomy in concert by force upon child <14	667(e)(2)C)(iv)(I)

Prior Conviction	*Description*	*Pen C Sections*
286(d)(3)	Sodomy in concert by force upon child >14	667(e)(2)C)(iv)(I)
288(a)	Lewd act upon a child under the age of 14	667(e)(2)C)(iv)(III)
288(b)(1)	Lewd act upon a child by force...	667(e)(2)C)(iv)(I)
288(b)(2)	Lewd act by caretaker by force...	667(e)(2)C)(iv)(I)
288a(c)(1)	Oral copulation upon a child <14 + 10 years...	667(e)(2)C)(iv)(III)
288a(c)(2)(A)	Oral copulation by force	667(e)(2)C)(iv)(I)
288a(c)(2)(B)	Oral copulation by force... force upon child <14.	667(e)(2)C)(iv)(I)
288a(c)(2)(C)	Oral copulation by force... force upon child >14.	667(e)(2)C)(iv)(I)
288a(d)	Oral copulation in concert by force.	667(e)(2)C)(iv)(I)
288.5(a)	Continuous sexual abuse of a child with force...	667(e)(2)C)(iv)(I)
289(a)(1)(A)	Sexual penetration by force, etc.	667(e)(2)C)(iv)(I)
289(a)(1)(B)	Sexual penetration upon a child <14 by force...	667(e)(2)C)(iv)(I)
289(a)(1)(C)	Sexual penetration upon a child >14 by force...	667(e)(2)C)(iv)(I)
289(a)(2)(C)	Sexual penetration by threat to retaliate.	667(e)(2)C)(iv)(I)
289(j)	Sexual penetration upon a child <14 + 10 years...	667(e)(2)C)(iv)(II)
653f	Solicitation to commit murder.	667(e)(2)C)(iv)(V)
664/191.5	Attempt vehicular manslaughter while intoxicated	667(e)(2)C)(iv)(IV)
664/187	Attempt murder	667(e)(2)C)(iv)(IV)
11418(a)(1)	Possession of a weapon of mass destruction	667(e)(2)C)(iv)(VII)

Senate Bill No. 215

CHAPTER 1005

An act to amend Section 1001.36 of the Penal Code, relating to diversion.

[Approved by Governor September 30, 2018. Filed with
Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 215, Beall. Diversion: mental disorders.

Existing law authorizes a court to grant pretrial diversion, for a period no longer than 2 years, to a defendant suffering from a mental disorder, on an accusatory pleading alleging the commission of a misdemeanor or felony offense, in order to allow the defendant to undergo mental health treatment. Existing law conditions eligibility on, among other criteria, a court finding that the defendant's mental disorder played a significant role in the commission of the charged offense. Existing law requires, if the defendant has performed satisfactorily in diversion, that the court dismiss the defendant's criminal charges, with a record filed with the Department of Justice indicating the disposition of the case diverted, that the arrest is deemed never to have occurred, and requires the court to order access to the record of the arrest restricted, except as specified.

This bill would make defendants ineligible for the diversion program for certain offenses, including murder, voluntary manslaughter, and rape. The bill would authorize a court to require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion, as specified. The bill would also require the court, upon request, to conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, to order its payment during the period of diversion. The bill would provide that a defendant's inability to pay restitution due to indigence or mental disorder would not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion. The bill would also make technical changes.

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

SECTION 1. Section 1001.36 of the Penal Code is amended to read:

1001.36. (a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court may, after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant meets all of the requirements specified in paragraph (1) of subdivision (b).

(b) (1) Pretrial diversion may be granted pursuant to this section if all of the following criteria are met:

(A) The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a recent diagnosis by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(B) The court is satisfied that the defendant's mental disorder was a significant factor in the commission of the charged offense. A court may conclude that a defendant's mental disorder was a significant factor in the commission of the charged offense if, after reviewing any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense, the court concludes that the defendant's mental disorder substantially contributed to the defendant's involvement in the commission of the offense.

(C) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder motivating the criminal behavior would respond to mental health treatment.

(D) The defendant consents to diversion and waives his or her right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iv) of subparagraph (B) paragraph (1) of subdivision (a) of Section 1370 and, as a result of his or her mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of his or her right to a speedy trial.

(E) The defendant agrees to comply with treatment as a condition of diversion.

(F) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(2) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(A) Murder or voluntary manslaughter.

(B) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(C) Rape.

(D) Lewd or lascivious act on a child under 14 years of age.

(E) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(F) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(G) Continuous sexual abuse of a child, in violation of Section 288.5.

(H) A violation of subdivision (b) or (c) of Section 11418.

(3) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(c) As used in this chapter, "pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(1) (A) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(B) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(2) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(3) The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years.

(4) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(d) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(e) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (g) and (h). The defendant who successfully completes diversion may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (g).

(f) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(g) The defendant shall be advised that, regardless of his or her completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (f), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(h) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(i) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

O

Assembly Bill No. 1065

CHAPTER 803

An act to amend, repeal, and add Sections 853.6 and 978.5 of, to add and repeal Sections 490.4, 786.5, and 1210.6 of, to add and repeal Chapter 2.9D (commencing with Section 1001.81) of Title 6 of Part 2 of, and to add and repeal Chapter 13 (commencing with Section 13899) of Title 6 of Part 4 of, the Penal Code, relating to theft.

[Approved by Governor September 27, 2018. Filed with Secretary of State September 27, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1065, Jones-Sawyer. Theft: aggregation: organized retail theft.

(1) Existing law, the Safe Neighborhoods and Schools Act, enacted as an initiative statute by Proposition 47, as approved by the electors at the November 4, 2014, statewide general election, requires shoplifting, defined as entering a commercial establishment with the intent to commit larceny where the property taken does not exceed $950, to be punished as a misdemeanor. Proposition 47 requires that the act of shoplifting be charged as shoplifting and prohibits a person who is charged with shoplifting from being charged with burglary or theft of the same property.

This bill would, until January 1, 2021, create the crime of organized retail theft which would be defined as acting in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value, acting in concert with 2 or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen, acting as the agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of a plan to commit theft, or recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake acts of theft. The bill would make these crimes punishable as either misdemeanors or felonies, as specified. By creating new crimes, this bill would impose a state-mandated local program.

(2) Under existing law, when a public offense is committed in part in one jurisdictional territory and in part in another jurisdictional territory, or the acts constituting or requisite to the consummation of the offense occur in 2 or more jurisdictional territories, the jurisdiction for the offense is in any competent court within either jurisdictional territory.

This bill would, until January 1, 2021, additionally establish the jurisdiction of a criminal action for theft, organized retail theft, or receipt of stolen property as including the county where an offense involving the theft or receipt of the stolen merchandise occurred, the county in which the

merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense. The bill would also, if multiple offenses of theft or other specified crimes all involving the same defendant or defendants and the same merchandise or the same defendant or defendants and the scheme or substantially similar activity occur in multiple jurisdictions, establish that any of those jurisdictions is a proper jurisdiction for all of the offenses.

(3) Existing law generally requires that a person arrested for a misdemeanor be released on written notice to appear in court. Existing law allows a peace officer to retain a person in custody on an arrest for a misdemeanor if, among other reasons, there are one or more outstanding arrest warrants for the person, there is reason to believe the person will not appear in court, or there is a reasonable likelihood that the offense will continue or resume.

This bill would, until January 1, 2021, allow a peace officer to retain a person arrested for a misdemeanor if there are unresolved failures to appear in court on previous misdemeanor citations, if he or she has been cited, arrested, or convicted for misdemeanor or felony theft from a store or from a vehicle in the previous 6 months, or if there is probable cause to believe that the person arrested is guilty of committing organized retail theft, as defined. By increasing the number of persons subject to detention at the county jail, this bill would create a state-mandated local program.

(4) Existing law authorizes a court to issue a bench warrant whenever a defendant fails to appear in court as required by law, as specified.

This bill would, until January 1, 2021, authorize the issuance of a bench warrant if a defendant has been cited or arrested for misdemeanor or felony theft from a store or vehicle and has failed to appear in court in connection with that charge or those charges in the previous 6 months.

(5) Existing law authorizes a court, with the consent of the defendant and a waiver of the defendant's speedy trial right, to postpone prosecution of a misdemeanor and place the defendant in a pretrial diversion program or a deferred entry of judgment program under specified situations.

This bill would, until January 1, 2021, authorize a city or county prosecuting attorney or a county probation department to create a diversion or deferred entry of judgment program for persons who commit repeat theft offenses, as specified. Under the program, the prosecuting attorney may enter into a written agreement to refrain from or defer prosecution on the offense or offenses if the person completes program requirements such as community service and makes adequate restitution or an appropriate substitute for restitution to the establishment or person from which property was stolen.

(6) Existing law establishes the Board of State and Community Corrections to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system.

This bill would, until January 1, 2021, additionally require the board to, upon appropriation by the Legislature, award funding for a grant program

to 4 or more county superior courts or county probation departments to create demonstration projects to reduce the recidivism of high-risk misdemeanor probationers through the use of risk assessments at sentencing and formal probation. The bill would require the board to develop reporting requirements for each county, as specified, and would require the board to prepare and distribute a report that compiles this information, as specified.

The bill would also, until January 1, 2021, require the Department of the California Highway Patrol to, in coordination with the Department of Justice, convene a regional property crimes task force to assist local law enforcement in counties identified by the Department of the California Highway Patrol as having elevated levels of property crime, including, but not limited to, organized retail theft and vehicle burglary. The bill would require the task force to provide local law enforcement in the identified region with logistical support and other law enforcement resources, including, but not limited to, personnel and equipment, as determined to be appropriate by the Commissioner of the California Highway Patrol in consultation with task force members.

(7) The bill would provide that its provisions are severable.

(8) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so 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. Section 490.4 is added to the Penal Code, to read:

490.4. (a) A person who commits any of the following acts is guilty of organized retail theft, and shall be punished pursuant to subdivision (b):

(1) Acts in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value.

(2) Acts in concert with two or more persons to receive, purchase, or possess merchandise described in paragraph (1), knowing or believing it to have been stolen.

(3) Acts as an agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of an organized plan to commit theft.

(4) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of the acts described in paragraph (1) or (2) or any other statute defining theft of merchandise.

(b) Organized retail theft is punishable as follows:

(1) If violations of paragraph (1), (2), or (3) of subdivision (a) are committed on two or more separate occasions within a 12-month period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that 12-month period exceeds nine hundred fifty dollars ($950), the offense is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170.

(2) Any other violation of paragraph (1), (2), or (3) of subdivision (a) that is not described in paragraph (1) of this subdivision is punishable by imprisonment in a county jail not exceeding one year.

(3) A violation of paragraph (4) of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170.

(c) For the purpose of determining whether the defendant acted in concert with another person or persons in any proceeding, the trier of fact may consider any competent evidence, including, but not limited to, all of the following:

(1) The defendant has previously acted in concert with another person or persons in committing acts constituting theft, or any related offense, including any conduct that occurred in counties other than the county of the current offense, if relevant to demonstrate a fact other than the defendant's disposition to commit the act.

(2) That the defendant used or possessed an artifice, instrument, container, device, or other article capable of facilitating the removal of merchandise from a retail establishment without paying the purchase price and use of the artifice, instrument, container, or device or other article is part of an organized plan to commit theft.

(3) The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption and the property is intended for resale.

(d) In a prosecution under this section, the prosecutor shall not be required to charge any other coparticipant of the organized retail theft.

(e) Upon conviction of an offense under this section, the court shall consider ordering, as a condition of probation, that the defendant stay away from retail establishments with a reasonable nexus to the crime committed.

(f) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 2. Section 786.5 is added to the Penal Code, to read:

786.5. (a) The jurisdiction of a criminal action for theft, as defined in subdivision (a) of Section 484, or a violation of Section 490.4 or Section 496, shall also include the county where an offense involving the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of a theft offense or a violation of Section 490.4 or Section 496 or in abetting the parties concerned therein. If multiple offenses of theft or violations of Section 490.4 or Section 496, either all involving the same defendant or defendants and the same merchandise, or all involving the same defendant

or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper jurisdiction for all of the offenses. Jurisdiction also extends to all associated offenses connected together in their commission to the underlying theft offenses or violations of Section 490.4 or Section 496.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 3. Section 853.6 of the Penal Code is amended to read:

853.6. (a) (1) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter, although nothing prevents an officer from first booking an arrestee pursuant to subdivision (g). If the person is released, the officer or his or her superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or his or her superior shall prepare a written notice to appear in a court.

(2) In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, or arrested pursuant to a policy, as described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

(3) This subdivision shall not apply to the crimes specified in Section 1270.1, including crimes defined in each of the following:

(A) Paragraph (1) of subdivision (e) of Section 243.

(B) Section 273.5.

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

(D) Section 646.9.

(4) Nothing in this subdivision shall be construed to affect a defendant's ability to be released on bail or on his or her own recognizance, except as specified in Section 1270.1.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer, and the officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon

which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of that section or a violation that is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) No warrant shall be issued for the arrest of a person who has given a written promise to appear in court, unless and until he or she has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person at the scene or at the arresting agency prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by making an entry on the citation. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.

(i) Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one or more of the following is a reason for nonrelease, in

which case the arresting officer may release the person, except as provided in subdivision (a), or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants or failures to appear in court on previous misdemeanor citations that have not been resolved for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated. An arrest warrant or failure to appear that is pending at the time of the current offense shall constitute reason to believe that the person would not appear as specified in the notice.

(10) The person was subject to Section 1270.1.

(11) The person has been cited, arrested, or convicted for misdemeanor or felony theft from a store or from a vehicle in the previous 6 months.

(12) There is probable cause to believe that the person arrested is guilty of committing organized retail theft, as defined in subdivision (a) of Section 490.4.

The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her from custody before trial.

(j) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the

magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

(k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

(*l*) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

(m) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 4. Section 853.6 is added to the Penal Code, to read:

853.6. (a) (1) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter, although nothing prevents an officer from first booking an arrestee pursuant to subdivision (g). If the person is released, the officer or his or her superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or his or her superior shall prepare a written notice to appear in a court.

(2) In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, or arrested pursuant to a policy, as described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

(3) This subdivision shall not apply to the crimes specified in Section 1270.1, including crimes defined in each of the following:

(A) Paragraph (1) of subdivision (e) of Section 243.

(B) Section 273.5.

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

(D) Section 646.9.

(4) Nothing in this subdivision shall be construed to affect a defendant's ability to be released on bail or on his or her own recognizance, except as specified in Section 1270.1.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer, and the officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section

374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of that section or a violation that is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) No warrant shall be issued for the arrest of a person who has given a written promise to appear in court, unless and until he or she has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person at the scene or at the arresting agency prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by making an entry on the citation. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.

(i) Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, except as provided in subdivision (a), or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

(10) The person was subject to Section 1270.1.

The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her from custody before trial.

(j) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

(k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement

agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

(*l*) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

(m) This section shall become operative January 1, 2021.

SEC. 5. Section 978.5 of the Penal Code is amended to read:

978.5. (a) A bench warrant of arrest may be issued whenever a defendant fails to appear in court as required by law including, but not limited to, the following situations:

(1) If the defendant is ordered by a judge or magistrate to personally appear in court at a specific time and place.

(2) If the defendant is released from custody on bail and is ordered by a judge or magistrate, or other person authorized to accept bail, to personally appear in court at a specific time and place.

(3) If the defendant is released from custody on his own recognizance and promises to personally appear in court at a specific time and place.

(4) If the defendant is released from custody or arrest upon citation by a peace officer or other person authorized to issue citations and the defendant has signed a promise to personally appear in court at a specific time and place.

(5) If a defendant is authorized to appear by counsel and the court or magistrate orders that the defendant personally appear in court at a specific time and place.

(6) If an information or indictment has been filed in the superior court and the court has fixed the date and place for the defendant personally to appear for arraignment.

(7) If a defendant has been cited or arrested for misdemeanor or felony theft from a store or vehicle and has failed to appear in court in connection with that charge or those charges in the previous six months.

(b) The bench warrant may be served in any county in the same manner as a warrant of arrest.

(c) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 6. Section 978.5 is added to the Penal Code, to read:

978.5. (a) A bench warrant of arrest may be issued whenever a defendant fails to appear in court as required by law including, but not limited to, the following situations:

(1) If the defendant is ordered by a judge or magistrate to personally appear in court at a specific time and place.

(2) If the defendant is released from custody on bail and is ordered by a judge or magistrate, or other person authorized to accept bail, to personally appear in court at a specific time and place.

(3) If the defendant is released from custody on his own recognizance and promises to personally appear in court at a specific time and place.

(4) If the defendant is released from custody or arrest upon citation by a peace officer or other person authorized to issue citations and the defendant has signed a promise to personally appear in court at a specific time and place.

(5) If a defendant is authorized to appear by counsel and the court or magistrate orders that the defendant personally appear in court at a specific time and place.

(6) If an information or indictment has been filed in the superior court and the court has fixed the date and place for the defendant personally to appear for arraignment.

(b) The bench warrant may be served in any county in the same manner as a warrant of arrest.

(c) This section shall become operative on January 1, 2021.

SEC. 7. Chapter 2.9D (commencing with Section 1001.81) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.9D. REPEAT THEFT CRIMES DIVERSION OR DEFERRED ENTRY OF JUDGMENT PROGRAM

1001.81. (a) The city or county prosecuting attorney or county probation department may create a diversion or deferred entry of judgment program pursuant to this section for persons who commit repeat theft offenses. The

program may be conducted by the prosecuting attorney's office or the county probation department.

(b) Except as provided in subdivision (e), this chapter does not limit the power of the prosecuting attorney to prosecute repeat theft.

(c) If a county creates a diversion or deferred entry of judgment program for individuals committing repeat theft offenses, on receipt of a case or at arraignment, the prosecuting attorney shall either refer the case to the county probation department to conduct a prefiling investigation report to assess the appropriateness of program placement or, if the prosecuting attorney's office operates the program, determine if the case is one that is appropriate to be referred to the program. In determining whether to refer a case to the program, the probation department or prosecuting attorney shall consider, but is not limited to, all of the following factors:

(1) Any prefiling investigation report conducted by the county probation department or nonprofit contract agency operating the program that evaluates the individual's risk and needs and the appropriateness of program placement.

(2) If the person demonstrates a willingness to engage in community service, restitution, or other mechanisms to repair the harm caused by the criminal activity and address the underlying drivers of the criminal activity.

(3) If a risk and needs assessment identifies underlying substance abuse or mental health needs or other drivers of criminal activity that can be addressed through the diversion or deferred entry of judgment program.

(4) If the person has a violent or serious prior criminal record or has previously been referred to a diversion program and failed that program.

(5) Any relevant information concerning the efficacy of the program in reducing the likelihood of participants committing future offenses.

(d) On referral of a case to the program, a notice shall be provided to or forwarded by mail to the person alleged to have committed the offense with all of the following information:

(1) The date by which the person must contact the diversion program or deferred entry of judgment program in the manner designated by the supervising agency.

(2) A statement of the penalty for the offense or offenses with which that person has been charged.

(e) The prosecuting attorney may enter into a written agreement with the person to refrain from, or defer, prosecution on the offense or offenses on the following conditions:

(1) Completion of the program requirements such as community service or courses reasonably required by the prosecuting attorney.

(2) Making adequate restitution or an appropriate substitute for restitution to the establishment or person from which property was stolen at the face value of the stolen property, if required by the program.

(f) For the purposes of this section, "repeat theft offenses" means being cited or convicted for misdemeanor or felony theft from a store or from a vehicle two or more times in the previous 12 months and failing to appear

in court when cited for these crimes or continuing to engage in these crimes after release or after conviction.

1001.82. This chapter shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 8. Section 1210.6 is added to the Penal Code, to read:

1210.6. (a) (1) Upon appropriation by the Legislature, the Board of State and Community Corrections shall award funding for a grant program to four or more county superior courts or county probation departments to create demonstration projects to reduce the recidivism of high-risk misdemeanor probationers.

(2) The demonstration projects shall use risk assessments at sentencing when a misdemeanor conviction results in a term of probation to identify high-risk misdemeanants and to place these misdemeanants on formal probation that combines supervision with individually tailored programs, graduated sanctions, or incentives that address behavioral or treatment needs to achieve rehabilitation and successful completion of probation. The formal probation program may include incentives such as shortening probation terms as probationers complete the individually tailored program or probation requirements.

(3) The demonstration projects shall evaluate the probation completion and recidivism rates for project participants and may compare them to control groups to evaluate program efficacy. The Board of State and Community Corrections shall determine criteria for awarding the grants on a competitive basis that shall take into consideration the ability of a county to conduct a formal misdemeanor probation project for high-risk misdemeanor probationers, including components that align with evidence-based practices in reducing recidivism, including, but not limited to, risk and needs assessment, programming to help with drug or alcohol abuse, mental illness, or housing, and the support of the superior court if the application is from a county probation department.

(b) The Board of State and Community Corrections shall develop reporting requirements for each county receiving a grant to report to the board the results of the demonstration project. The reports may include, but are not limited to, the use of risk assessment, the formal probation program components, the number of individuals who were placed on formal probation, the number of individuals who were placed on informal probation, and the number of individuals in each group who were subsequently convicted of a new offense.

(c) (1) The Board of State and Community Corrections shall prepare a report that compiles the information it receives from each county receiving a grant, as described in subdivision (b). The report shall be completed and distributed to the Legislature and county criminal justice officials two years after an appropriation by the Legislature for this section.

(2) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 9. Chapter 13 (commencing with Section 13899) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 13. RETAIL THEFT PREVENTION PROGRAM

13899. The Department of the California Highway Patrol shall, in coordination with the Department of Justice, convene a regional property crimes task force to assist local law enforcement in counties identified by the Department of the California Highway Patrol as having elevated levels of property crime, including, but not limited to, organized retail theft and vehicle burglary. The task force shall provide local law enforcement in the identified region with logistical support and other law enforcement resources, including, but not limited to, personnel and equipment, as determined to be appropriate by the Commissioner of the California Highway Patrol in consultation with task force members.

13899.1. This chapter shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 10. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other 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.

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2014-2018 Base and Growth Allocations

County	2014-15 Base	2014-15 Growth	2015-16 Base	2015-16 Growth	2016-17 Base	2016-17 Growth	2017-18 Base	2017-18 Growth
Alameda	$ 31,497,960	$ 4,100,990	$ 40,861,385	$ 1,776,165	$ 42,856,842	$ 2,422,666	$ 45,787,995	$ 5,513,055
Alpine	$ 167,152	$ 13,366	$ 224,809	$ 3,481	$ 235,787	$ 4,595	$ 251,913	$ 5,369
Amador	$ 1,368,104	$ 516,243	$ 1,378,795	$ 382,541	$ 1,446,128	$ 75,669	$ 1,545,035	$ 34,647
Butte	$ 6,466,722	$ 1,697,507	$ 6,931,223	$ 219,961	$ 7,269,708	$ 552,340	$ 7,766,913	$ 259,439
Calaveras	$ 992,402	$ 255,449	$ 1,114,713	$ 90,663	$ 1,169,150	$ 54,214	$ 1,249,113	$ 788,456
Colusa	$ 589,667	$ 243,850	$ 693,231	$ 20,003	$ 727,085	$ 49,694	$ 776,813	$ 61,480
Contra Costa	$ 20,669,679	$ 8,765,532	$ 20,831,204	$ 727,382	$ 21,848,491	$ 1,195,045	$ 23,342,798	$ 2,375,791
Del Norte	$ 721,629	$ 436,564	$ 983,957	$ 47,756	$ 1,032,008	$ 61,952	$ 1,102,591	$ 28,279
El Dorado	$ 3,586,615	$ 1,818,367	$ 3,614,643	$ 234,813	$ 3,791,163	$ 222,252	$ 4,050,456	$ 172,912
Fresno	$ 24,164,305	$ 2,558,069	$ 32,711,894	$ 941,281	$ 34,309,372	$ 2,975,703	$ 36,655,930	$ 1,920,436
Glenn	$ 846,022	$ 134,849	$ 1,153,582	$ 321,454	$ 1,209,917	$ 100,668	$ 1,292,668	$ 176,369
Humboldt	$ 3,695,189	$ 806,028	$ 4,330,130	$ 356,079	$ 4,541,591	$ 140,475	$ 4,852,209	$ 300,685
Imperial	$ 3,501,228	$ 409,231	$ 4,777,351	$ 218,106	$ 5,010,652	$ 565,417	$ 5,353,350	$ 390,492
Inyo	$ 541,209	$ 61,046	$ 691,756	$ 46,526	$ 725,537	$ 56,564	$ 775,160	$ 248,762
Kern	$ 31,628,367	$ 4,872,538	$ 36,104,558	$ 3,753,017	$ 37,867,716	$ 1,399,164	$ 40,457,643	$ 3,346,246
Kings	$ 6,894,852	$ 2,618,439	$ 6,948,733	$ 652,823	$ 7,288,072	$ 843,929	$ 7,786,533	$ 278,805
Lake	$ 1,934,887	$ 192,832	$ 2,497,419	$ 105,656	$ 2,619,380	$ 112,486	$ 2,798,530	$ 569,592
Lassen	$ 1,080,925	$ 185,516	$ 1,358,884	$ 152,545	$ 1,425,245	$ 54,397	$ 1,522,723	$ 220,498
Los Angeles	$ 290,538,549	$ 23,778,008	$ 344,481,162	$ 17,755,186	$ 361,303,819	$ 22,298,545	$ 386,014,858	$ 12,317,966
Madera	$ 4,087,031	$ 640,018	$ 5,576,210	$ 318,582	$ 5,848,523	$ 639,914	$ 6,248,528	$ 602,411
Marin	$ 4,900,330	$ 2,569,053	$ 4,938,624	$ 182,798	$ 5,179,800	$ 408,743	$ 5,534,068	$ 260,189
Mariposa	$ 472,956	$ 92,075	$ 566,924	$ 169,734	$ 594,610	$ 16,152	$ 635,278	$ 51,140
Mendocino	$ 2,205,821	$ 711,297	$ 2,322,880	$ 156,857	$ 2,436,317	$ 79,842	$ 2,602,947	$ 886,932
Merced	$ 5,692,045	$ 1,444,201	$ 7,763,704	$ 539,041	$ 8,142,842	$ 714,281	$ 8,699,764	$ 336,045
Modoc	$ 235,208	$ 45,018	$ 321,108	$ 88,070	$ 336,789	$ 15,502	$ 359,823	$ 26,290
Mono	$ 428,294	$ 70,606	$ 584,103	$ 44,113	$ 612,628	$ 64,198	$ 654,528	$ 37,940
Monterey	$ 8,633,838	$ 844,532	$ 11,159,775	$ 647,463	$ 11,704,760	$ 756,797	$ 12,505,297	$ 385,741
Napa	$ 2,673,402	$ 551,811	$ 3,240,370	$ 676,311	$ 3,398,613	$ 283,400	$ 3,631,058	$ 185,871
Nevada	$ 1,918,350	$ 783,916	$ 1,933,341	$ 80,310	$ 2,027,755	$ 194,020	$ 2,166,441	$ 204,494
Orange	$ 63,045,168	$ 17,399,444	$ 70,813,993	$ 2,931,181	$ 74,272,178	$ 6,055,331	$ 79,351,954	$ 4,783,418
Placer	$ 6,659,794	$ 1,930,434	$ 7,176,968	$ 259,768	$ 7,527,454	$ 636,454	$ 8,042,287	$ 588,898
Plumas	$ 551,023	$ 197,629	$ 609,538	$ 59,307	$ 639,305	$ 25,139	$ 683,029	$ 30,491
Riverside	$ 47,744,372	$ 5,381,263	$ 65,141,764	$ 2,142,476	$ 68,322,947	$ 6,709,911	$ 72,995,831	$ 2,572,932
Sacramento	$ 30,485,341	$ 3,679,007	$ 41,572,174	$ 1,337,531	$ 43,602,342	$ 2,532,450	$ 46,584,483	$ 8,597,884
San Benito	$ 1,203,382	$ 428,214	$ 1,593,050	$ 203,766	$ 1,670,846	$ 143,765	$ 1,785,122	$ 163,847
San Bernardino	$ 68,145,357	$ 12,157,309	$ 83,729,133	$ 4,712,958	$ 87,818,026	$ 5,398,263	$ 93,824,259	$ 2,276,500
San Diego	$ 63,164,783	$ 16,578,200	$ 68,458,956	$ 1,518,743	$ 71,802,133	$ 5,740,690	$ 76,712,973	$ 2,411,562
San Francisco	$ 18,337,440	$ 6,285,751	$ 20,359,877	$ 965,739	$ 21,354,147	$ 1,240,372	$ 22,814,644	$ 1,374,521
San Joaquin	$ 16,066,726	$ 1,771,257	$ 21,513,379	$ 1,142,909	$ 22,563,980	$ 989,100	$ 24,107,222	$ 2,032,188
San Luis Obispo	$ 5,644,308	$ 545,788	$ 7,164,312	$ 284,364	$ 7,514,180	$ 691,713	$ 8,028,105	$ 288,366
San Mateo	$ 14,450,429	$ 5,863,388	$ 14,563,353	$ 885,694	$ 15,274,551	$ 956,884	$ 16,319,240	$ 987,971
Santa Barbara	$ 8,657,369	$ 1,118,182	$ 11,078,836	$ 551,843	$ 11,619,868	$ 993,525	$ 12,414,598	$ 760,393
Santa Clara	$ 36,404,725	$ 8,409,131	$ 41,313,799	$ 1,543,990	$ 43,331,349	$ 3,580,025	$ 46,294,956	$ 3,471,148
Santa Cruz	$ 5,637,055	$ 748,732	$ 6,832,189	$ 612,916	$ 7,165,838	$ 764,181	$ 7,655,938	$ 643,431
Shasta	$ 6,741,871	$ 2,487,750	$ 6,794,556	$ 342,732	$ 7,126,367	$ 256,950	$ 7,613,768	$ 1,093,649
Sierra	$ 178,831	$ 91,603	$ 231,033	$ 5,697	$ 242,315	$ 16,329	$ 258,888	$ 35,271
Siskiyou	$ 1,110,942	$ 356,271	$ 1,296,058	$ 52,299	$ 1,359,351	$ 86,398	$ 1,452,322	$ 427,770
Solano	$ 9,077,651	$ 3,143,755	$ 10,466,801	$ 402,396	$ 10,977,944	$ 386,517	$ 11,728,771	$ 297,427
Sonoma	$ 9,657,516	$ 4,530,253	$ 9,732,986	$ 371,092	$ 10,208,294	$ 604,266	$ 10,906,481	$ 496,743
Stanislaus	$ 13,899,952	$ 1,440,268	$ 17,764,873	$ 1,180,382	$ 18,632,416	$ 1,530,289	$ 19,906,763	$ 1,126,729
Sutter	$ 2,692,639	$ 1,024,819	$ 2,713,681	$ 287,448	$ 2,846,203	$ 161,826	$ 3,040,867	$ 225,183
Tehama	$ 2,824,325	$ 3,101,850	$ 2,846,396	$ 46,705	$ 2,985,399	$ 266,558	$ 3,189,582	$ 1,219,295
Trinity	$ 427,173	$ 220,005	$ 580,154	$ 26,124	$ 608,486	$ 27,350	$ 650,103	$ 62,243
Tulare	$ 12,723,594	$ 2,227,867	$ 15,875,860	$ 587,520	$ 16,651,153	$ 1,502,507	$ 17,789,994	$ 1,030,339
Tuolumne	$ 1,389,149	$ 183,692	$ 1,776,122	$ 133,987	$ 1,862,858	$ 145,887	$ 1,990,266	$ 123,527
Ventura	$ 16,115,645	$ 6,183,310	$ 16,300,317	$ 439,395	$ 17,096,339	$ 931,118	$ 18,265,628	$ 468,066
Yolo	$ 6,506,453	$ 3,279,053	$ 6,689,128	$ 221,316	$ 7,015,790	$ 644,623	$ 7,495,628	$ 347,977
Yuba	$ 2,424,248	$ 1,447,764	$ 2,443,192	$ 126,925	$ 2,562,505	$ 70,526	$ 2,737,765	$ 206,351
California	$ 934,100,000	$ 173,428,945	$ 1,107,528,945	$ 54,085,919	$ 1,161,614,864	$ 79,447,570	$ 1,241,062,434	$ 70,130,455

* The 2014-15 growth numbers include an additional $64.8 million per Government Code section 30027.9, subdivision (a), paragraph (3). Although the Governor's May Revision realignment estimates displays $998.9 million for base and $108.6 million for growth, this chart reflects the restoration in the growth column as it was distributed using the growth formula. While the display is different, the total statewide and individual county allocations are the same.

AB 109 Realignment: 2018-2019 Base Estimate

County	Base Share	2016-2017 Base	2017-2018 Base	2018-2019 Base Estimate
Alameda	3.689419%	$42,856,841.54	$45,787,995.42	$48,375,401.87
Alpine	0.020298%	$235,787.02	$251,913.45	$266,148.68
Amador	0.124493%	$1,446,128.01	$1,545,034.59	$1,632,342.03
Butte	0.625828%	$7,269,708.03	$7,766,912.96	$8,205,808.80
Calaveras	0.100649%	$1,169,150.25	$1,249,113.19	$1,319,698.58
Colusa	0.062593%	$727,085.10	$776,813.41	$820,709.89
Contra Costa	1.880872%	$21,848,490.81	$23,342,798.05	$24,661,862.27
Del Norte	0.088843%	$1,032,007.81	$1,102,591.02	$1,164,896.68
El Dorado	0.326370%	$3,791,162.85	$4,050,455.91	$4,279,340.70
Fresno	2.953593%	$34,309,372.06	$36,655,929.70	$38,727,297.72
Glenn	0.104158%	$1,209,917.29	$1,292,668.46	$1,365,715.09
Humboldt	0.390972%	$4,541,591.18	$4,852,209.10	$5,126,399.68
Imperial	0.431352%	$5,010,651.63	$5,353,350.49	$5,655,859.78
Inyo	0.062459%	$725,537.49	$775,159.95	$818,963.00
Kern	3.259920%	$37,867,715.72	$40,457,642.97	$42,743,839.73
Kings	0.627409%	$7,288,072.31	$7,786,533.25	$8,226,537.80
Lake	0.225495%	$2,619,379.73	$2,798,529.77	$2,956,670.22
Lassen	0.122695%	$1,425,245.17	$1,522,723.49	$1,608,770.17
Los Angeles	31.103581%	$361,303,819.17	$386,014,858.40	$407,827,941.22
Madera	0.503482%	$5,848,523.37	$6,248,527.70	$6,601,622.02
Marin	0.445914%	$5,179,800.47	$5,534,068.11	$5,846,789.45
Mariposa	0.051188%	$594,609.96	$635,277.76	$671,176.29
Mendocino	0.209735%	$2,436,316.98	$2,602,946.62	$2,750,034.98
Merced	0.700993%	$8,142,842.31	$8,699,764.45	$9,191,374.24
Modoc	0.028993%	$336,788.95	$359,823.32	$380,156.36
Mono	0.052739%	$612,627.83	$654,527.94	$691,514.27
Monterey	1.007628%	$11,704,760.29	$12,505,296.50	$13,211,950.82
Napa	0.292577%	$3,398,613.08	$3,631,058.07	$3,836,243.35
Nevada	0.174563%	$2,027,755.07	$2,166,441.49	$2,288,863.64
Orange	6.393873%	$74,272,177.67	$79,351,954.29	$83,836,006.43
Placer	0.648016%	$7,527,453.51	$8,042,286.70	$8,496,743.47
Plumas	0.055036%	$639,304.56	$683,029.21	$721,626.10
Riverside	5.881721%	$68,322,946.91	$72,995,831.42	$77,120,709.21
Sacramento	3.753597%	$43,602,341.62	$46,584,483.29	$49,216,898.00
San Benito	0.143838%	$1,670,846.35	$1,785,122.33	$1,885,996.75
San Bernardino	7.559995%	$87,818,026.30	$93,824,258.67	$99,126,117.60
San Diego	6.181234%	$71,802,132.81	$76,712,973.01	$81,047,900.54
San Francisco	1.838316%	$21,354,147.32	$22,814,644.40	$24,103,863.49

AB 109 Realignment: 2018-2019 Base Estimate

San Joaquin	1.942467%	$22,563,979.72	$24,107,222.16	$25,469,482.76
San Luis Obispo	0.646874%	$7,514,179.91	$8,028,105.27	$8,481,760.67
San Mateo	1.314941%	$15,274,550.89	$16,319,239.61	$17,241,413.77
Santa Barbara	1.000320%	$11,619,867.94	$12,414,598.02	$13,116,127.12
Santa Clara	3.730268%	$43,331,348.89	$46,294,956.26	$48,911,010.26
Santa Cruz	0.616886%	$7,165,837.67	$7,655,938.48	$8,088,563.33
Shasta	0.613488%	$7,126,366.69	$7,613,767.93	$8,044,009.78
Sierra	0.020860%	$242,315.05	$258,887.96	$273,517.30
Siskiyou	0.117022%	$1,359,350.51	$1,452,322.03	$1,534,390.42
Solano	0.945059%	$10,977,944.29	$11,728,770.60	$12,391,544.68
Sonoma	0.878802%	$10,208,293.93	$10,906,480.72	$11,522,788.52
Stanislaus	1.604010%	$18,632,416.38	$19,906,763.19	$21,031,662.57
Sutter	0.245021%	$2,846,203.21	$3,040,866.64	$3,212,701.15
Tehama	0.257004%	$2,985,398.86	$3,189,582.44	$3,369,820.65
Trinity	0.052383%	$608,486.05	$650,102.89	$686,839.17
Tulare	1.433449%	$16,651,153.44	$17,789,993.62	$18,795,277.73
Tuolumne	0.160368%	$1,862,858.02	$1,990,266.47	$2,102,733.24
Ventura	1.471773%	$17,096,339.37	$18,265,627.62	$19,297,789.05
Yolo	0.603969%	$7,015,789.62	$7,495,628.03	$7,919,193.99
Yuba	0.220599%	$2,562,505.06	$2,737,765.21	$2,892,471.95
California		$1,161,614,864.00	$1,241,062,434.00	$1,311,192,889.00