



Administration of Justice Policy Committee
CSAC Legislative Conference
Wednesday, May 17, 2017 — 2:15 p.m. – 3:45 p.m.
Hyatt Regency, Regency A
Sacramento, California 95814

Supervisor Federal Glover, Contra Costa County, Chair
Supervisor Alfredo Pedroza, Napa County, Vice Chair

- 2:15 p.m. I. **Welcome and Introductions**
Supervisor Federal Glover, Contra Costa County, Chair
Supervisor Alfredo Pedroza, Napa County, Vice Chair
- 2:20 p.m. II. **Bail Reform Legislation – Legislation Discussion**
Why California’s Bail System Needs Reforming?
Senator Bob Hertzberg, Author SB 10
Assemblymember Rob Bonta, Author AB 42
- 2:40 p.m. *Question and Answer*
- 2:50 p.m. III. **Existing Bail System and National Reform Efforts**
The Current System Needs Changes, But Should California Eliminate Money Bail All Together?
Jeffrey Clayton, Executive Director, American Bail Association
- 3:20 p.m. *Question and Answer*
- 3:30 p.m. IV. **Existing Pretrial Programs and Need for Reforms**
Counties Are Already Doing Pre-Trial Services – Is Bail Reform Really Needed?
Aaron Johnson, Pretrial Services Director, Santa Clara County
Fernando Giraldo, Chief Probation Officer, Santa Cruz County
- 3:40 p.m. *Question and Answer*
- 3:45 p.m. V. **Adjournment**

ATTACHMENTS

Bail Reform Legislation Discussion

Attachment One Memo on Bail Reform Legislation

Attachment Two California Constitution: Section 12

Attachment Three Assembly Bill 42 by Assembly Member Bonta

Attachment Four Senate Bill 10 by Senator Bob Hertzberg

Attachment Five PPIC: Pretrial Release in California Report

Attachment Six Santa Cruz County: 2016 Adult Probation
Annual Report

Bail Reform Legislation Discussion
Attachment One
Memo on Bail Reform Legislation



May 17, 2017

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To: CSAC Administration of Justice Policy Committee

From: Darby Kernan, Legislative Representative
Stanicia Boatner, Legislative Analyst

Re: **California Bail System and Proposed Reforms**

The California Legislature is undertaking an effort to reform California's money bail system. With legislation introduced in each house, Senate Bill 10, by Senator Bob Hertzberg and Assembly Bill 42 by Assemblymember Rob Bonta, the goal of both bills is to reform the current money bail system and replace it with a pretrial process (see attached analyses for details on legislation).

The right to bail is in California's Constitution in Article 1, Section 12 where it states:

A person shall be released on bail by sufficient sureties, except for:

- (a) Capital crimes when the facts are evident or the presumption great;
- (b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or
- (c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

A person may be released on his or her own recognizance in the court's discretion.

Currently in California after an individual is booked into jail, the defendant who is awaiting trial may be held in jail or released by law enforcement or the courts. Defendants who post bail offer a financial guarantee to courts that they will appear for mandated hearings.

Various counties have implemented comprehensive pretrial and custody alternatives to address the large number of individuals being held pretrial in county jails. In Santa Cruz County, they have reported saving \$2 million by increasing their pretrial services (see attached report). According to the Santa Cruz County 2016 Probation, Adult Division Annual Report, based on monthly statistics released from the Santa Cruz County Sheriff's Office, the pretrial detainees accounted for about 60% of the total detention facilities population in 2015, and decreased slightly to 59% in 2016, below the state average of 63 percent. The average daily population under pretrial supervision in the community has continued to increase over the last several years; and Santa Cruz anticipates the number to increase exponentially if bail reform continues on its current trajectory. Pretrial assessments provide a guide for balancing an

individual's overall risk to fail to appear, with risk to reoffend while in the community when making release decisions, as opposed to a money based system of posting bond based on current charges.

In 2016, 88.2% of the individuals released to pretrial supervision appeared for court, which is comparable to the previous year. Following a 47% increase in the number of individuals released to pretrial supervision from 241 to 355. Similar to the previous year, more than 75% of defendants released to pretrial supervision pre-arraignment in 2016 appeared for court (43 of 57). In addition, in 2016 93% of defendants released to pretrial supervision completed their period of pretrial supervision with no new offenses.

In conclusion, advocates of the current system argue that the use of bail is a constitutional and effective means of ensuring court appearances, with the added benefit of operating at no cost to the taxpayers. Proponents of reforming the current system argue that release decisions should be based solely on a defendant's risk of failing to appear in court and their risk of reoffending if released while awaiting trial.

Bail Reform Legislation Discussion
Attachment Two
California Constitution: Section 12



*** CALIFORNIA CONSTITUTION - CONS**

ARTICLE I DECLARATION OF RIGHTS [SECTION 1 - SEC. 32] (Article 1 adopted 1879.)

A person shall be released on bail by sufficient sureties, except for:

SEC. 12. (a) Capital crimes when the facts are evident or the presumption great;

(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or

(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

A person may be released on his or her own recognizance in the court's discretion.

(Sec. 12 amended Nov. 8, 1994, by Prop. 189. Res.Ch. 95, 1994.)

Bail Reform Legislation
Attachment Three
Assembly Bill 42 by Assembly Member Bonta

Date of Hearing: April 18, 2017
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 42 (Bonta) – As Amended March 27, 2017

SUMMARY: Revises the pretrial release system by limiting pretrial detention to specified persons, eliminating the use of bail schedules, and establishing pretrial services agencies tasked with conducting risk assessments on arrested person and preparing reports with recommendations for conditions of release. Specifically, **this bill:**

- 1) Contains legislative findings and declarations regarding money bail and pretrial release.
- 2) States legislative intent to safely reduce the number of pretrial detainees.
- 3) Repeals Penal Code sections 815a, 1269b, 1270, 1270.1, 1270.2, 1275, 1288, 1289, 1318, and 1319.
- 4) Specifies times for an arrested person to be taken before a magistrate when the arrest date occurs on a Wednesday that is a court holiday.
- 5) States that specified persons may approve and accept an order authorizing pretrial release or admitting to bail, issue and sign an order for the release of a detainee, and set a time and place for the person's appearance before the court.
- 6) Requires each county to establish a pretrial services agency that will be responsible for gathering information about newly arrested persons, conducting pretrial risk assessments, preparing individually tailored recommendations to the court, and providing pretrial services and supervision to persons on pretrial release.
- 7) Requires the pretrial services agency to conduct a pretrial risk assessment of a detainee upon booking into jail, except for those charged with violent felonies, and to prepare a pretrial services report with recommendations for release.
- 8) Prohibits use of pretrial service reports for any purpose other than for decisions on pretrial release. Copies of the report shall be provided to the court, the prosecutor, defense counsel, or the arrested person if not represented by counsel.
- 9) Establishes the following pre-arraignment classifications for release:
 - a) Prohibits pre-arraignment release of a person charged with a serious felony, a violent felony, felony witness intimidation, spousal rape, domestic violence, stalking, violation of protective orders, or any felony while the person was on pretrial release for a separate offense;

- b) Requires the release of persons charged with all other felonies, either with no conditions of release or with the least restrictive conditions deemed necessary; and
 - c) Requires the pretrial release of a person who is arrested and booked for a misdemeanor, rather than cited and released, except if the person is charged with a misdemeanor while on pretrial release. Release is subject to signing a release agreement and no release conditions may be imposed.
- 10) Establishes the following pre-arraignment procedures for release:
- a) The pretrial services agency shall immediately transmit the pretrial services report with recommendations to the court, except as specified;
 - b) The court shall issue an oral or written order for release, either with or without conditions and subject to a release agreement, no later than unspecified hours after receipt of the risk assessment and pretrial services report have been received; and
 - c) The court will release a detainee, regardless of whether the pretrial services report is available. The court can release the detainee with or without conditions of release.
- 11) Provides that, when a person is released before arraignment, either the defendant or the prosecutor may file a motion to amend the release order alleging changed circumstances and requesting different or additional conditions of release at the time of arraignment.
- 12) Authorizes court commissioners to order the pre-arraignment, pre-trial release of arrested persons.
- 13) Allows an officer arresting a person for a bailable felony offense, or for a misdemeanor violation of a domestic-violence restraining order, to file a declaration alleging that he or she has reasonable cause to believe that pre-arraignment pre-trial release with no conditions of release would be insufficient to either ensure the defendant's appearance in court or the safety of the victim and/or his or her family.
- 14) Establishes the following rules for pretrial release at arraignment and for detention hearings:
- a) Requires the court, in making a decision for pretrial release at arraignment or at a detention hearing, to consider the protection of the public, the seriousness of the charged offense, the defendant's prior criminal record, the probability of appearing in court, and the presumption of innocence; but public safety and that of the victim, along with probability of appearance shall be the primary considerations;
 - b) States that, in considering the seriousness of the offense, the factors to be considered are the alleged injury to the victim, alleged threats to the victim or a witness, and alleged use of a firearm or other deadly weapon;
 - c) Imposes upon the court the duty to determine what condition or conditions of release will ensure public safety, the defendant's appearance in court, and facilitate pretrial release. Upon a finding at a detention hearing that no such conditions will reasonably ensure this,

the court's order must provide findings of fact and a statement of reasons;

- d) Requires the court to consider the pretrial agency's risk assessment, report, and recommendations of release, except as specified. If the release decision is inconsistent with the recommendations of the pretrial services agency, the court's order must include a statement of reasons; and
- e) Requires the court to make a pretrial release or detention decision without undue delay, as specified.

15) Establishes the following protocol for pre-trial release at arraignment:

- a) All persons who have not been released before arraignment and who have not been ordered detained will be released using the least restrictive conditions necessary to ensure appearance and public safety;
- b) First, the court shall consider the pretrial services report and any relevant information provided by the prosecutor and the defendant and order release without conditions, subject to the signing of a release agreement. The reason for the decision shall be stated on the record;
- c) If the court determines that pretrial release without conditions will not reasonably assure the person's appearance in court, the safety of the victim, or the public safety, the court shall order pretrial release subject to a release agreement with the least restrictive nonmonetary conditions determined reasonable to ensure court appearance and safety. A statement of reasons for the determination is required; and
- d) If the court determines that the person cannot be released with non-monetary conditions alone, then the court is authorized to set monetary bail, as specified, or a combination of monetary bail and other conditions to assure the defendant's appearance. The court must state its reasons for the determination.

16) Requires the court to set money bail be set at the least restrictive amount necessary to assure the defendant's appearance and to consider the defendant's present ability to pay without substantial hardship, as specified.

17) Prohibits the judge from setting bail in an amount which results in pretrial detention because of inability to pay.

18) States that if the pretrial services report with conditions for release is unavailable, then the court will release the person on the least restrictive conditions necessary to ensure appearance and public safety.

19) Provides that for defendants charged with violent felonies, the risk assessment and report with recommendations will only be prepared if the defendant requests them.

20) Provides that a defendant for who conditions of release have been imposed and who, five days after such imposition continues to be detained because of an inability to meet the conditions of release, is entitled to an automatic review of the conditions, unless he or she

waives such review.

- 21) Allows the prosecutor to file a motion for pretrial detention at any time alleging any of the following:
 - a) The person is charged with a capital crime and the facts are evident or the presumption great;
 - b) The person is charged with a violent felony or a felony sexual assault and the facts are evident or presumption great, there is no condition or combination thereof that would reasonably assure the safety of others, and, there is a substantial likelihood that release would result in great bodily harm to others; or when,
 - c) The person is charged with a felony and the facts are evident or presumption great, the defendant has threatened another with great bodily harm, there is no condition or combination thereof that would reasonably assure the safety of person threatened, and there is substantial likelihood that the person would carry out the threat if released.
- 22) Requires the court, upon the filing of a motion for pretrial detention, to hold a hearing within 48 hours, as specified, unless the defendant waives a hearing.
- 23) Prohibits the court from considering the results of a pretrial risk assessment at a detention hearing.
- 24) Allows the court to order pretrial detention of the defendant only if the court makes all of the findings above, which are consistent with the California Constitution. The standard of proof is clear and convincing evidence.
- 25) Provides that if the person is ordered detained, then the court's order must include findings of fact and a statement of reasons.
- 26) Provides that if the court does not order pretrial detention after a hearing on a motion to detain, then pretrial services shall conduct a risk assessment and issue a report with recommendations for conditions of release, and the court shall order the person released either with or without conditions.
- 27) Provides that when money bail is set, a defendant may execute an unsecured appearance bond, as specified, which may be required to be signed by uncompensated third parties, or may execute a secured bond.
- 28) Defines "unsecured appearance bond" as "an order to release a person upon his or her promise to appear in court and his or her unsecured promise to pay an amount of money, specified by the court, if he or she fails to appear as promised."
- 29) Allows the court to modify a pretrial release order upon a change in circumstances, to change the conditions of release, including the amount of any money bail. A request for modification may be brought by the prosecutor or the defendant.

- 30) Provides that if a person violates the terms and conditions of pretrial release, he or she may be held in contempt of court upon motion of the prosecutor.
- 31) Prohibits a finding that the person is in contempt of court unless the court finds that: (1) there is probable cause to believe the defendant committed a crime while on pretrial release, or there is evidence that the person violated a term of release, and (2) there are no conditions of release to reasonably ensure the defendant will not flee or pose a danger to society, or the defendant is unlikely to abide by any condition of release.
- 32) Requires pretrial services agencies to make every effort to assist pretrial defendant in complying with conditions of release, and must at a minimum, notify defendants of court dates. The agency may also assist defendants in obtaining community services.
- 33) Permits the court to order a pretrial services agency to supervise and monitor the compliance of released defendants.
- 34) Authorizes an unnamed agency to oversee pretrial services agencies, to select a statewide pretrial assessment tool, to develop guidelines, and to provide training and assistance on pretrial release to judges, prosecutors, defense counsel, pretrial services agencies, jail staff, and law enforcement.
- 35) Provides guidelines for the pretrial risk assessment tool which shall be selected by the unnamed agency and for existing pretrial risk assessment tools that comply with these guidelines and that had been in use by counties prior to the effective date of this bill.
- 36) Requires the Board of State and Community Corrections (BSCC), in consultation with the unnamed agency, to develop a plan that establishes statewide requirements for counties related to annual reporting of pretrial release and detention data which must include the percentage of individuals released on pretrial, the percentage of those who fail to appear, those who commit new crimes while on pretrial release, and the rate of judicial concurrence with recommended conditions of release. This data must be disaggregated by race or ethnicity and gender.
- 37) Requires the unspecified agency to use the data reported by counties to monitor the effectiveness of the county's pretrial release policies, standards, and procedures to ensure compliance with state law.
- 38) Requires each county to make publicly available its risk assessment tool guidelines, factors, weights, studies, data upon which validation studies rely, and information about how a risk assessment tool was re-normed.
- 39) Makes conforming changes to other Penal Code provisions.

EXISTING LAW:

- 1) Prohibits excessive bail. (U.S. Const., 8th Amend. & Cal. Const., art. I, sec. 12.)

- 2) States that a person shall be granted release on bail except for the following crimes when the facts are evident or the presumption great:
 - a) Capital crimes;
 - b) Felonies involving violence or sexual assault if the court finds by clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; and,
 - c) Felonies where the court finds by clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released. (Cal. Const., art. I, sec. 12.)
- 3) Lists several factors that the court must consider in setting, reducing, or denying bail: the protection of the public; the seriousness of the charged offense; the defendant's prior criminal record; and, the probability of his or her appearing at trial or hearing of the case. Public safety is the primary consideration. (Pen. Code, § 1275, subd. (a).)
- 4) States that in considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant. (Pen. Code, § 1275, subd. (a).)
- 5) Requires the court to consider the safety of the victim and the victim's family in setting bail and release conditions for a defendant. (Cal. Const., art. I, sec. 28, subd. (b)(3).)
- 6) Requires the superior court judges in each county to prepare, adopt, and annually revise a uniform, countywide bail schedule. (Pen. Code, § 1269b, subd. (c).)
- 7) Requires the countywide bail schedule to contain a list of the offenses and the amounts of bail applicable for each. If the schedule does not list all offenses specifically, then the bail schedule shall contain a general clause for designated amounts of bail for the offenses not specifically listed. (Pen. Code, § 1269b, subd. (f).)
- 8) Provides that at the time of issuing an arrest warrant, the magistrate shall fix the amount of bail which, in the magistrate's judgment, will be reasonable and sufficient for the defendant to appear, if the offense is bailable. (Pen. Code, § 815a.)
- 9) Provides that an arrested person must be taken before the magistrate with 48 hours of arrest, excluding Sundays and holidays. (Pen. Code, 825, subd. (a).)
- 10) Authorizes the officer in charge of a jail, or the clerk of the superior court to approve and accept bail in the amount fixed by the arrest warrant, the bail schedule, or an order admitting to bail in case or surety bond, and to issue and sign an order for the release of the arrested person, and to set a time and place for the person's appearance in court. (Pen. Code, 1269b, subd. (a).)

- 11) Authorizes a court to release a person who has been arrested for, or charged with, any offense other than a capital offense, on his or her own recognizance (OR). (Pen. Code, § 1270.)
- 12) Prohibits the release of a defendant on his or her OR for any violent felony until a hearing is held in open court and the prosecuting attorney is given notice and an opportunity to be heard on the matter. (Pen. Code, § 1319.)
- 13) Specifies conditions for a defendant's release on his or her own recognizance (OR). (Pen. Code, § 1318.)
- 14) Authorizes a court, with the concurrence of the board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on OR. (Pen. Code, § 1318.1, subd. (a).)
- 15) States that whenever a court has employed investigative staff for the purpose of recommending whether a defendant should be released on OR, an investigative report shall be prepared in all cases involved in a violent felony listed in Penal Code Section 667.5(c), or a felony violation of driving under the influence and causing bodily injury to another person, recommending whether the defendant should be released on OR. The report shall include all of the following:
 - a) Written verification of any outstanding warrants against the defendant;
 - b) Written verification of any prior incidents where the defendant has failed to make a court appearance;
 - c) Written verification of the criminal record of the defendant; and,
 - d) Written verification of the residence of the defendant during the past year. (Pen. Code, § 1318.1(b).)
- 16) Provides that a defendant released on bail for a felony who willfully fails to appear in court, as specified, is guilty of a crime. (Pen. Code, § 1320.5.)
- 17) Specifies that if an on-bail defendant fails to appear for any scheduled court appearance, the bail is forfeited unless the clerk of the court fails to give proper notice to the surety or depositor within 30 days, or the defendant is brought before the court within 180 days. (Pen. Code, § 1305, subds. (a) & (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “Money bail reform by other states, combined with national and California-specific research on the issue, supports a pretrial system that is not regressive and further strengthens public safety. I am proud to author AB 42 to create a more effective and just replacement for our money bail system, which is broken, discriminatory, and punishes poor people simply for being poor. It’s a system that links freedom with personal wealth and ignores public safety and flight risk.

“With AB 42, and mirror legislation in the Senate, we are developing a system that is a smarter, safer option for thousands of people being held in jail pretrial on nonviolent or misdemeanor charges. A system of pretrial assessment and services will allow our overflowing county jails to target their limited space on those people who are truly a threat to the public or a flight risk for the courts. Overcrowded jails are in no one’s best interest, and the time to act is now.

“Last year, my office conducted a public forum in Oakland examining money bail. I had the chance to see the faces and hear the stories of innocent people who have been severely harmed by the money bail system. People can easily lose their jobs, their homes, and in some cases their kids if they are thrown in jail and can’t afford to pay for their freedom. Beyond the financial burden, people who are locked up while they await trial are more likely to accept a plea deal for a crime they didn’t even commit, just to regain their freedom. There is a better way.

“Defendants who are properly evaluated by the courts and released, with or without conditions, back to their families can keep their jobs and continue providing for their children and loved ones while they await trial. Research from reforms in other states and the District of Columbia have shown that something as simple as a phone call or text message can help make sure a defendant shows up for court. As California voters have shown over the last several election cycles, they want evidence-based solutions that ensure public safety, that give judges greater discretion to make informed decisions, and that use scarce public funds responsibly.”

- 2) **Background:** In California, bail is a constitutional right except when the defendant is charged with: (1) a capital crime; (2) a felony involving violence or sex and the court finds that the person’s release would result in great bodily harm to another; or (3) when the defendant has threatened another and the court finds it likely that the defendant might carry out that threat. The constitution also allows for an arrestee to be released upon a written promise to appear, known as release on own recognizance. The constitution prohibits excessive bail. (Cal. Const. art. I, § 12.)

Courts require many defendants to deposit monetary bail in order to be released from custody. Bail is intended to act as a financial guarantee to the court that the defendant will appear for all required court hearings. An arrestee may post bail with his or her own cash, or may post bail using a bail bond.

Currently, each county sets a bail schedule based exclusively on the charged offense. The bail schedule is used by the arresting officer to allow an arrestee to post bail before his or her court appearance. Once a defendant is brought before the court, there must be an individualized determination of the appropriate amount of bail.

Another function of the bail system is protection of the community. Arguably, the current bail system does not actually address community safety concerns because there is no assessment of risk, at least when bail is posted before the arrestee appears before the court.

- 3) **Challenges Presented by Money Bail System:** There are a number of challenges that the bail system faces. A growing number of people acknowledge that the bail system has a

negative impact on communities of color and those who come from the lower end of the socio-economic spectrum. In short, those who have money have the ability to confront their criminal charges while free from confinement in county jail. Those who are too poor to post bail are forced to remain incarcerated, and are more likely to plead guilty in order to get out of custody. Prior to the initial court appearance, the determination as to who remains detained while awaiting resolution of criminal charges is made based on money, and not whether the person is a present danger to the community or whether he or she will return to court.

The ability to be out of custody while facing criminal charges carries a number of inherent advantages. A defendant who is released on bail is able to carry on with his or her life while awaiting the disposition of the criminal case. For instance, criminal defendants who are out on bail are not only able to maintain employment but they are also encouraged to do so.

The current system results in California jails being crowded with individuals who are occupying jail beds while they are facing criminal charges. Due to overcrowding, jails are often forced to release inmates who have already been convicted and sentenced and should be serving their criminal sentences.

- 4) **Public Policy Institute of California Report on Jail Capacity and Pretrial Inmates:** In 2015, the Public Policy Institute of California (PPIC) issued a report on pretrial release and jail overcrowding. The report noted that as of September 2014, 62% of jail beds were filled with inmates awaiting either trial or sentencing. The report stated that California uses pretrial detention more than the rest of the country. However, the state's high rates of pretrial detention have not been associated with lower rates of failures to appear or lower levels of felony rearrests. In fact, California has had higher rates of both failures to appear and rearrests for non-violent felonies. (*Pretrial Detention and Jail Capacity in California*, S. Tafoya, July 2015, http://www.ppic.org/main/publication_quick.asp?i=1154.)

“Given that the legal rationale for pretrial detention is to ensure court appearances and preserve public safety, the data presented here indicate that California may not be getting a good return on the high levels of pretrial detention it has maintained. California's pretrial practices are associated with lower rates of rearrests for violent felonies, but this result may have been achieved at the cost of detaining many defendants who might have safely been released under some form of pretrial supervision. Moreover, as critics of the bail system have long argued, releasing defendants based on their ability to post bail is both inequitable and unnecessarily risky: defendants with financial resources can purchase release even if there is a high risk that they will engage in pretrial misconduct, while low-risk defendants who are poor may be needlessly held in jail.” (*Id.*)

The report found that “pretrial services programs—if properly implemented and embraced by the courts, probation, and the jails—could address jail overcrowding and improve the efficiency, equitability, and transparency of pretrial release decision making.” (*Id.*)

- 5) **Pretrial Services:** According to the California Association of Pretrial Services Website, pretrial services agencies are important because they improve the court's release and detention decision-making process. They also protect public safety by ensuring that only those defendants who can safely be released are released. Use of pretrial services agencies

also increases the use of non-financial release alternatives, which reduces the percentage of pretrial detainees in the jail. Finally, pretrial services agencies can save taxpayer dollars by reducing the costs of jailing pretrial defendants (<http://pretrialservicesca.org/about>)

Services provided by pretrial services can include: jail screening and interviewing of all arrestees; investigation of the arrestee's ties to the community, past record, potential dangerousness to the community, past history of failures to appear, and the seriousness of the current criminal charges; preparation of a written report to the court and the presiding magistrate, summarizing the defendant's ties to the community and a recommendation for or against release; case monitoring of conditions of release and court date notification system for defendants; supervised release for selected defendants; social services referrals for defendants; and follow-up services to locate defendants who have failed to appear and return them to the court system without the unnecessary costs of an arrest. (<http://pretrialservicesca.org/about>)

This bill would require every county to establish a pretrial services agency. The agencies would be tasked with conducting risk assessments on arrested persons, preparing pretrial services reports with recommendation for release. The agencies would also be required to assist pretrial defendants in complying with conditions of release, and must at a minimum, notify defendants of court dates.

This committee has been unable to determine how many out of the 58 counties have pretrial services agencies. Would each county be able to establish the required pretrial services agency by the effective date? Should the effective date of this legislation be delayed to ensure counties can effectively comply with the mandates imposed, particularly since this is such a broad and sweeping change in pretrial practice?

- 6) **Preventative Detention:** This bill prohibits preventative detention except in limited circumstances delineated by the California Constitution, namely (1) if the person is charged with a capital crime; or (2) the person is charged with either a violent felony or a felony sex assault, there is no condition or combination thereof that would reasonably assure the safety of others, and, there is a substantial likelihood that release would result in great bodily harm to others; or (3) when the person is charged with a felony and the defendant has threatened another person with great bodily harm, and there is substantial likelihood that the person would carry out the threat if released.

Other than those three narrow categories, all other defendants must be released at arraignment using the least restrictive means of release, either with no release conditions, non-financial conditions of release, or on money bail, with or without other condition, as a last resort. Additionally, if the court chooses money bail, the bail must be set at the least amount needed to ensure the defendant's appearance in court, and in an amount that the defendant can afford to pay without borrowing money, obtaining a loan, or paying for a bond. The bail amount cannot cause hardship to the defendant. The court is prohibited from setting bail in an amount which results in a defendant's pretrial detention because of inability to pay.

Arguably there are some offenders who do not fall into these narrow categories allowing detention under the California Constitution, but who could nevertheless pose a threat to public safety or a flight risk because of the severity of charges and potential length of

incarceration they face. In such cases, the two considerations for the court in setting money bail could potentially create a conflict. There may be situations where the court believes public safety or flight risk requires setting a significant amount of bail; and yet, the court must also comply with the mandates that the bail be set in amount that will not cause hardship and will not result in detention.

7) **Arguments in Support:**

- a) According to the *American Civil Liberties Union of California*, a Co-sponsor of this bill, “Groups as diverse as the U.S. Department of Justice, the Council of Chief Justices, the American Bar Association, the Movement for Black Lives, the Cato Institute, and Right on Crime have spoken out against discriminatory bail practices across the country. Here in California, in her last two State of the Judiciary addresses, Chief Justice Tani Cantil-Sakauye has identified the need for pretrial reform in our state; and a bipartisan coalition of legislators, communities, families, organizations, professors, attorneys, political organizations, judges, and local officials have joined the movement for reform. The time is ripe for change.

“Here in California, about 63% of people in jail in California on any given day (or 46,000 people) are either awaiting trial or sentencing, at a high financial and social cost to taxpayers. Many Californians cannot afford to post bail and so must either stay in jail or pay substantial nonrefundable fees to a bail bond company. These fees are not refunded – even if the court finds that a person is innocent or was wrongfully arrested.

“California’s current bail system is likewise punishing whole families and communities. Over-policing of communities of color results in more arrests, exacting a disproportionate price from these communities. Whole families suffer, as they take on long-term debt to purchase the safety and freedom of a loved one, and women are hit the hardest. According to an Ella Baker Center survey, 83% of family members who take on court-related costs on behalf of loved ones are women.

“Successful models for reform can be found in California and other states. For example, in Kentucky, about 70% of pretrial defendants are released (68% on non-financial releases), 89% make all future court appearances, and 92% are not re-arrested while on pretrial release. Santa Clara County has implemented a successful pretrial services model and has saved \$33 million in six months by keeping 1,400 defendants out of jail. Like with these systems, under the California Bail Reform Act, judges will have access to helpful tools and resources to assist them in their pretrial decision-making. These resources help to protect public safety while reducing the number of people kept in jail after arrest. It is time for California to implement these proven and cost-effective systems across the state.”

- b) According to the *Ella Baker Center for Human Rights*, a Co-sponsor of this bill, “In California, nearly 2/3 of the people sitting in jail are either awaiting trial or sentencing, at a significant cost to the state and vulnerable families. The State spends \$5 million per day to lock up people who are waiting to go to court—totaling more than \$1.8 billion annually. Families are forced to make the difficult decision between covering their basic needs like housing and paying the bail bonds agency. Families that cannot afford the 10% fee often go on payment plans that perpetuate the cycle of poverty. When a person

remains in jail because they cannot afford bail, others may need to fill the financial gap he or she leaves behind, forcing family members to drop out of school to get a job, or quitting a job to take care of children that are left behind.

“Further, people forced to stay in jail because they cannot afford bail face a number of additional obstacles. Many people take coercive plea deals in order to avoid waiting for trial so they can get back to their lives and familial obligations. Research has shown that compared to people who are released prior to trial, those held for their entire pretrial detention have a greater likelihood of being sentenced to jail. Studies have also shown a strong correlation between length of detention and recidivism. Compared to people who were held no more than 24 hours, those held for 8 to 14 days were 51% more likely to go back to jail for another crime. Pre-trial detention as a result of inability to pay bail can also result in loss of employment, housing, child custody rights, etc. Black men are not only less likely to be released on their own recognizance, their bail amounts are also 35% higher on average than white men. Most alarmingly, nearly 80% of all jail deaths in California occur among people who are detained pre-trial.

“People of color are already over-represented in the criminal justice system and current pre-trial detention practices exacerbate these disparities. The current system of bail was designed to most severely impact those who can least afford it. AB 42 provides California with the opportunity to decriminalize poverty, reduce racial disparities, and enhances public safety outcomes.”

8) Arguments in Opposition:

- a) According to the *California District Attorneys Association*, “California’s current pretrial release procedures help to ensure that dangerous defendants are not released to commit new crimes and harm victims and witnesses before trial. Under these procedures, the court already has wide discretion to release a defendant on his or her own recognizance, or to reduce bail for defendants that do not pose such risks. Whatever the deficiencies in the current system, it hardly seems prudent to start from scratch. ...

“There are also tremendous logistical problems with the proposed pretrial release scheme. Under the bill, when Friday is a court holiday, a Wednesday arrestee must be charged by Thursday. So, when someone is arrested on Wednesday at 11:00 p/m/. the police must complete reports, present them to the district attorney on Thursday, and expect the district attorney to make a careful charging decision in time for an afternoon court arraignment. This compressed timeline will undoubtedly result in the release of dangerous individuals.

“Even when given a full two days before arraignment, AB 42 makes it extremely onerous to achieve pretrial detention for dangerous defendants. The district attorney must file a written motion at arraignment, containing myriad required allegation, and be expected to prove those allegations in a contested hearing – all of this within 48 hours of the arrest. The existing bail schedule system allows judges to exercise discretion to raise or lower bail for violent felons, in a sensible period of time.”

- b) According to the *Golden State Bail Agents Association*, “This bill will cost taxpayers more than \$3.8 billion per year. The current bail system operates at no cost to taxpayers. On the other hand, the costs of the pretrial system proposed in this bill this will be

enormous. According to the California Attorney General's Office, there were 1,086,889 adults arrested in California in 2015. This bill mandates that each county create a pretrial services agency that will have enough staff and other resources to evaluate and prepare a timely pretrial risk assessment report for every defendant arrested, with certain exceptions. The cost of evaluating and preparing a timely pretrial risk assessment report for each of these defendants will be unaffordable. ...

"This bill will cause the incarceration of more pretrial defendants because it eliminates the bail schedule. Most counties do not have pretrial services agencies in place and the bail schedule is the only mechanism for recently arrested defendants to get released from jail before their arraignment. Therefore, defendants that could have bailed out of custody under the bail schedule will sit in jail for 48 hours or longer awaiting arraignment.

"This bill is unconstitutional. This bill violates the defendant's rights to bail by sufficient sureties which is guaranteed by the California Constitution. Bail by sufficient sureties means the defendant must have the option to secure release through a bail bond posted by a commercial surety. Several other jurisdictions have considered identical phrasing in their state constitutions and have reached the same conclusion. This bill will force defendants that could afford bail to sit in jail or to agree to onerous pretrial release conditions to get released.

"Eliminating bail as a meaningful option, as this bill does, and substituting an invasive pretrial program which includes conditions like mandatory drug testing, GPS monitoring and onerous reporting requirements, would raise serious constitutional concerns, which are exacerbated if violations of pretrial conditions would create additional criminal exposure for the accused. The Ninth Circuit has held that, in some circumstances, such pretrial release conditions are unconstitutional. In *United States v. Scott*, 450 F.3d 863, 874 (9th Cir. 2005), the defendant agreed to submit to home searches and drug testing in order to obtain pretrial release. But when law enforcement conducted a home search and a drug test of the defendant, the Ninth Circuit suppressed the results because these searches could not pass Fourth Amendment muster 'under any of the three [relevant] approaches: consent, special needs [,] or totality of the circumstances.' *Id.* As an individual merely accused of a crime and presumed innocent, the defendant maintained Fourth Amendment rights that the government could not violate. Even the defendant's consent to the conditions of pretrial release could not render those conditions constitutionally legitimate because the government cannot impose 'unconstitutional conditions' in exchange for government benefits. *Id.* at 866 (citing *Dolan v. City of Tigard*, 512 U.S. 374 (1994))."

- c) According to the *Peace Officers Research Association of California*, "The elimination of bond schedules and the imposition of required risk assessment will delay the process of release for all defendants. Also, by creating a statewide pretrial supervision program, this bill actually requires that no defendant will be required to pay for pretrial monitoring and services. This means that the third party benefit provided to a defendant at no cost to the state or a county government will now have to be borne by county governments.

"Lastly, the study we looked at had FTA's [failure to appear] going up to 70%, which makes sense. Why would anyone actually appear if they have a higher likelihood of

going to jail?”

9) Related Legislation:

- a) AB 789 (Rubio) allows a court to approve, without a hearing, own recognizance (OR) release under a court-operated or court-approved pretrial release program for arrestees of specified offenses with three or more prior failures to appear. AB 789 is pending hearing in the Assembly Appropriations Committee.
- b) SB 10 (Hertzberg) is identical to this bill. SB 10 is pending hearing in the Senate Appropriations Committee.

10) Prior Legislation:

- a) AB 805 (Jones-Sawyer), Chapter 17, Statutes of 2013, provides that in setting bail, a judge or magistrate may consider factors such as the report prepared by investigative staff for the purpose of recommending whether a defendant should be released on his/her own recognizance.
- b) AB 2388 (Hagman) of the 2013-2014 Legislative Session, required the Judicial Council to prepare, adopt, and annually revise an advisory statewide bail schedule for all bailable felony offenses and for all misdemeanor and infraction offenses, except Vehicle Code infractions, that counties could reference when setting a countywide bail schedule. AB 2388 was held on the Appropriations suspense file.
- c) SB 210 (Hancock), of the 2013-2014 Legislative Session, would have revised the criteria for determining eligibility for pretrial release from custody. SB 210 was ordered to the Assembly Inactive File.
- d) SB 210 (Hancock), of the 2011-12 Legislative Session, required a court to determine, with public safety as the primary consideration, whether a defendant charged with a jail felony is eligible for release on his or her own recognizance (OR). SB 210 failed passage on the Assembly Floor.
- e) SB 1180 (Hancock) of the 2011-12 Legislative Session, was substantially similar to SB 210. SB 1180 was ordered to the Senate Inactive File.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union (Co-Sponsor)
Anti-Recidivism Coalition (Co-Sponsor)
Californians for Safety and Justice (Co-Sponsor)
California Public Defenders Association (Co-Sponsor)
Ella Baker Center for Human Rights (Co-Sponsor)
Silicon Valley De-Bug (Co-Sponsor)
Western Center on Law and Poverty (Co-Sponsor)
A New Path

A New Way of Life Reentry Project
All Saint's Church
Alliance for Boys and Men of Color
American Academy of Pediatrics
American Friends Service Committee
Amity Foundation
Asian Americans Advancing Justice
Asian Law Alliance
Avokids
Bend the Arc
Black Women for Wellness
California Association of Alcohol and Drug Program Executives
California Attorneys for Criminal Justice
California Catholic Conference
California Coalition for Mental Health
California Coalition for Women Prisoners
California Federation of Teachers
California Immigrant Policy Center
California Labor Federation
California Latinas for Reproductive Justice
California Women's Law Center
California Youth Empowerment Network
Center on Juvenile and Criminal Justice
Children's Defense Fund
City and County of San Francisco
Coalition for Humane Immigrant Rights
Communities United for Restorative
Community Oriented Correctional Health Services
Contra Costa County Defenders Association
Contra Costa County Democratic Party
Contra Costa County Public Defender's Office
Council on American-Islamic Relations, California
Courage Campaign
Didi Hirsch Mental Health Services
Disability Rights California
Drug Policy Alliance
El Grupo
Essie Justice Group
Fair Chance Project
Financial Justice Project, City and County of San Francisco
Friends Committee on Legislation of California
Homeboy Industries
Housing and Economic Rights Advocates
Human Impact Partners
Human Rights Watch
Hunger Action Los Angeles
John Burton Advocates for Youth
Los Angeles Regional Reentry Partnership
Marin County Public Defender's Office

Mental Health America of California
Mental Health America of Los Angeles
Monterey County Public Defender's Office
Napa County Public Defender's Office
National Alliance on Mental Illness, Los Angeles County Council
National Association for the Advancement of Colored People, San Jose/Silicon Valley
National Association of Social Worker's, California Chapter
National Council of La Raza
National Immigration Law Center
Oakland Privacy
Pangea Legal Services
Peace United Church of Christ
People's Life Fund
Root and Rebound
Rubicon Programs
San Francisco Coalition on Homelessness
San Francisco Public Defender's Office
San Francisco Senior and Disability Action
San Jose State University Human Rights Institute
Santa Barbara County Public Defender's Office
Solano County Public Defender's Office
Sonoma County Public Defender's Office
Strike Debt Bay Area
Tarzana Treatment Centers
Temple Beth El
The Advocacy Fund
The Kitchen
T'ruah
United Advocates for Children and Families
United Domestic Workers of America, AFSCME Local 3930
United Food and Commercial Workers, Western States Council
Urban Peace Institute
Voices for Progress Education Fund
W. Haywood Burns Institute
Western Regional Advocacy Project
Women's Foundation of California
Youth for Environmental Sanity
Youth Justice Coalition
9 to 5 Working Women

Four Private Individuals

Opposition

Albert Ramirez Bail Bonds
All-Pro Bail Bonds
American Bail Coalition
California Bail Agents Association
California District Attorneys Association

Golden State Bail Agents
Fresno County Sheriff-Coroner
Los Angeles County District Attorney
Peace Officers Research Association of California
Professional Bail Agents of the United States
Sacramento County District Attorney
San Diego County District Attorney
Speedy Bail Bonds
Surety and Fidelity Association of America
Urban Game Changer

119 Private Individuals

Analysis Prepared by: Sandy Uribe / PUB. S. /

Bail Reform Legislation Discussion
Attachment Four
Senate Bill 10 by Senator Bob Hertzberg

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 10 **Hearing Date:** April 4, 2017
Author: Hertzberg
Version: March 27, 2017
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Bail: Pretrial Release*

HISTORY

Source: American Civil Liberties Union of California
Anti-Recidivism Coalition
California Public Defenders Association
Californians for Safety and Justice
Ella Baker Center for Human Rights
Essie Justice Group
SEIU California
Silicon Valley De-Bug
Western Center on Law & Poverty

Prior Legislation: SB 163 (Hertzberg), amended but not referred to Committee (2016)
SB 210 (Hancock), failed passage on the Assembly Floor (2014)
AB 805 (Jones-Sawyer), Ch. 17, Stats. 2013
SB 210 (Hancock), failed passage on the Assembly Floor (2012)
SB 1180 (Hancock), failed passage on the Senate Floor (2012)

Support: American Academy of Pediatrics, California; American Friends Service Committee; Asian Law Alliance; Bend the Arc: A Jewish Partnership for Justice; Black Women for Wellness; California Attorneys for Criminal Justice; California Catholic Conference; California Coalition for Mental Health; California Latinas for Reproductive Justice; Center on Juvenile and Criminal Justice; Children's Defense Fund-California; Community Oriented Correctional Health Services; Contra Costa County Democratic Party; Contra Costa County Office of the Public Defender; Courage Campaign; Drug Policy Alliance; El Grupo; Fathers and Families of San Joaquin; Financial Justice Project in the City and County of San Francisco Office of the Treasurer & Tax Collector; Friends Committee on Legislation of California; Human Impact Partners; Hunger Action Los Angeles; John Burton Advocates for Youth; Marin County Office of the Public Defender; Monterey County Office of the Public Defender; Napa County Public Defender; National Association of Social Workers, California Chapter; Oakland Privacy; Peace United Church of Christ; People's Life Fund; Root & Rebound; Rubicon Programs; San Francisco Public Defender; San Francisco Senior & Disability Action; San Jose/Silicon Valley NAACP; Santa Barbara County Public Defender; Santa Clara County Public Defender; Solano County Public Defender's Office; Sonoma County Public Defender; Steinberg Institute; Tulare County Public Defender; Temple Beth El; UDW/AFSCME Local 3930; United Food &

Commercial Workers Union; Urban Peace Institute; Voices for Progress Education Fund; Western Regional Advocacy Project; Women's Foundation of California; Youth for Environmental Sanity; 9to5 Working Women; 325 private individuals

Opposition: Association for Los Angeles Deputy Sheriffs; Association for Deputy District Attorneys; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotic Officers Association; Golden State Bail Agents Association; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Riverside Sheriffs' Association; Speedy Bail Bonds; 8 private individuals

PURPOSE

The purpose of this bill is to reduce the amount of people held in pretrial detention because of the inability to afford money bail and to require each county to establish a pretrial services agency that meets certain specifications.

Existing law declares that a person shall be released on bail by sufficient sureties, except for:

- Capital crimes when the facts are evident or the presumption great;
- Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or
- Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released. (Cal. Const., art. I, section 12.)

Existing law prohibits excessive bail. (*Id.*)

Existing law states that in setting, reducing, or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. The public safety shall be the primary consideration. (Pen. Code § 1275, subd. (a).)

Existing law provides that in considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant. (*Id.*)

This bill repeals Penal Code section 1275.

Existing law authorizes a court, with the concurrence of the board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognize. (Pen. Code § 1318.1, subd. (a).)

Existing law provides that at the time of issuing a warrant of arrest, the magistrate shall fix the amount of bail which in his judgment will be reasonable and sufficient for the appearance of the defendant following his arrest, if the offense is bailable. (Pen. Code § 815a.)

This bill repeals Penal Code section 1318.1.

Existing law provides that that an arrested defendant must be taken before the magistrate within 48 hours after arrest, excluding Sundays and holiday. (Pen. Code § 825, subd. (a).)

This bill specifies that if the arrest occurs on a Wednesday if the Wednesday is a court holiday, the defendant shall be taken before the magistrate no later than Friday, and if the Friday is a court holiday, the defendant shall be taken before the magistrate no later than Thursday.

Existing law authorizes the officer in charge of a jail or the clerk of the superior court to approve and accept bail in the amount fixed by the arrest warrant, schedule of bail, or an order admitting to bail in cash or surety bond and to issue and sign an order for the release of the arrested person and to set a time and place for the appearance of the arrested person in court. (Pen. Code § 1269b, subd. (a).)

This bill instead provides that the officer in charge of the jail or the clerk of the superior court may approve and accept an order authorizing pretrial release or admitting to bail and to issue and sign an order for the release of the arrested person and to set a time and place for the appearance of the arrested person in court.

Existing law states that it is the duty of the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council. (Pen. Code § 1269b, subd. (c).)

Existing law requires the countywide bail schedule to contain a list of the offenses and the amounts of bail applicable for each as the judges determine to be appropriate. If the schedule does not list all offenses specifically, it shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedule. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior court judge and commissioner in the county, and to the Judicial Council. (Pen. Code § 1269b, subd. (f).)

This bill repeals Penal Code section 1269b.

This bill provides that a person who is arrested and booked into jail for an enumerated violent felony shall not be considered for release until the person appears before a judge or magistrate for a hearing and states that a pretrial services report shall not be prepared unless the defendant requests a pretrial risk assessment and report.

This bill provides that for the following specified offenses, a pretrial services agency shall conduct a risk assessment on a person arrested and booked into jail but the person shall not be considered for release until he or she appears before a judge or magistrate for a hearing:

- A serious felony as defined, except for first degree burglary;
- Intimidating a witness under certain circumstances, spousal rape, domestic violence, or stalking;
- Domestic violence battery;
- Violation of a court order, if the person is alleged to have made threats to kill or harm, engaged in violence against, or gone to the residence or workplace of, the protected party; or
- Any felony committed while the person is on pretrial release for a separate offense.

This bill requires, except for when a person is arrested for specified crimes, a pretrial services agency to immediately upon booking conduct a pretrial risk assessment on the arrested person and prepare a pretrial services report with recommendations for conditions of release.

This bill provides that a person who is arrested and booked for a misdemeanor, who is not first cited and released with a signed promise to appear in court, shall be released by the pretrial services agency subject to signing a release agreement without further conditions.

This bill requires the pretrial services agency to transmit the report with recommendations for conditions of release to the court and requires the court to issue an oral or written order to release the person, with or without release conditions, subject to the person signing a specified release agreement.

This bill states that if the pretrial services report is not available, the court shall release the person subject to a release agreement without further conditions or subject to conditions.

This bill provides that the fact that the court has not received the pretrial services report shall not preclude pretrial release.

This bill authorizes the court in which the charge is pending, upon petition by either party that there has been a change in circumstances, to amend the release order to impose different or additional conditions of release at the time of arraignment.

This bill authorizes court commissioners to order the pretrial release of arrested persons prior to arraignment.

Existing law authorizes a court to release a person who has been arrested for, or charged with any offense other than a capital offense, on his or her own recognizance. (Pen. Code § 1270.)

Existing law requires a person arrested for a misdemeanor to be released on his or own recognizance unless the court makes a finding on the record that there is no condition or combination of conditions that would reasonably ensure public safety and the appearance of the defendant as required, an own recognizance release will compromise public safety or will not reasonably ensure the appearance of the defendant. Public safety shall be the primary consideration. If the court makes one of those findings, the court shall then set monetary bail and specify the conditions, if any, under which the defendant shall be released. (*Id.*)

This bill repeals Penal Code section 1270.

Existing law authorizes a court to release a person on bail in an amount that is more or less than the amount contained in the bail schedule, or release the person on his or her own recognizance after conducting a hearing in open court. If bail is set in an amount that is different from that contained in the bail schedule, the judge or magistrate shall state the reasons for that decision on the record. (Pen. Code § 1270.1.)

This bill repeals Penal Code section 1270.1.

Existing law requires an automatic review, not more than five days from the original order fixing the bail amount, when a person is detained in custody on a criminal charge for want of bail. The defendant may waive this review. (Pen. Code § 1270.2.)

This bill repeals Penal Code section 1270.2.

Existing law states that in setting, reducing, or denying bail, a judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a hearing of the case. The public safety shall be the primary consideration. (Pen. Code § 1275.)

This bill repeals Penal Code section 1275 and instead creates a pretrial release hearing where a judge or magistrate, in making a determination to release an individual, shall consider the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, the probability of his or her appearing at trial or at a hearing of the case, and the presumption of innocence. The public safety, the safety of the victim, and the probability of the accused appearing in court as required shall be the primary considerations.

This bill states that in considering the seriousness of the offense charged, the court shall include consideration of the alleged injury to the victim, alleged threats to the victim or a witness to the crime charged, and the alleged use of a firearm or other deadly weapon in the commission of the crime charged.

This bill states that it shall be the duty of the court to determine what condition or conditions will ensure the safety of the community, secure the defendant's appearance at trial or at a hearing of the case, and facilitate pretrial release. If, after a hearing, the court finds that no conditions will reasonably assure the defendant's appearance in court or at a hearing of the court and protect public safety, the court shall issue an order explaining what condition or conditions it considered and why those conditions were inadequate.

This bill provides that in making a pretrial release decision, the court shall consider the pretrial services agency's risk assessment and recommendations on conditions of release. If the court's release decision is not consistent with the pretrial services agency's assessment and recommendations, the court shall include in its order for release a statement of the reasons.

This bill specifies that for persons who had a hearing after the district attorney filed a motion for pretrial detention, the court shall not consider the pretrial services agency's risk assessment and shall instead determine whether the person meets one of the following descriptions in order to keep detained:

- The person is charged with a capital crime;
- The person is charged with a felony involving violence or sexual assault and the person's release would likely result in great bodily harm to another person or persons;
- The person is charged with a felony offense and the person threatened another with great bodily harm and it is likely that the person would carry out the threat if released.

This bill provides that, if a person is in custody at the time of his or her arraignment, the judge or magistrate shall consider the pretrial services report and any relevant information provided by the prosecuting attorney or the defendant and order the pretrial release of the person without further conditions, subject to the person signing a release agreement. The reason for this decision shall be stated in the record.

This bill states that if a judge or magistrate determines that pretrial release, without conditions, will not reasonably assure the appearance of the person in court, the safety of the victim, or public safety, the judge or magistrate shall order pretrial release subject to a release agreement with the least restrictive further nonmonetary conditions that the judge or magistrate determines will reasonably assure the appearance of the person as required, the safety of the victim, and public safety. The court shall include in its release order a statement of the reasons for its determination.

This bill specifies that a court is not required to specify the reasons for ordering the defendant be provided the following services upon release: a reminder notification to come to court or assistance with transportation to and from court.

This bill authorizes the court to set monetary bail at the least restrictive level necessary or a combination of monetary bail and other conditions, to assure the appearance of the defendant in court and requires the court include in the release order a statement of the reasons for its determination.

This bill requires the court, in setting monetary bail, to conduct an inquiry into a person's ability to pay and to make a finding that the defendant has the present ability to pay the monetary bail set without substantial hardship.

This bill provides that a defendant for whom conditions of release are imposed and who, five days after the imposition of the conditions, continues to be detained as a result of an inability to meet the conditions of release, shall be entitled to an automatic review of the conditions by the court. The defendant may waive this review.

This bill authorizes a district attorney to file a motion seeking the pretrial detention of a person in certain circumstances, including when a person has been charged with a capital crime, a felony involving violence or sexual assault and the person's release would likely result in great bodily harm to another person or persons, or a felony offense and the person threatened another with great bodily harm and it is likely that the person would carry out the threat if released.

This bill provides that if a district attorney files a pretrial detention motion, a hearing shall be held within 48 hours to determine whether to release the person pending trial, unless the person waives the hearing.

This bill specifies that a person may be detained pretrial after a detention hearing if the court makes the following findings, which are consistent with the California Constitution:

- The defendant has been charged with a capital crime and the facts are evident or the presumption great;
- The defendant has been charged with a felony offense involving an act of violence on another person, or a felony sexual assault offense on another person, the facts are evident or the presumption great, and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person’s release would result in great bodily harm to another person or persons; or,
- The defendant has been charged with a felony offense, the facts are evident or the presumption great, and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm in the charged case and that there is a substantial likelihood that the person would carry out the threat if released.

This bill authorizes a defendant to execute an unsecured appearance bond, which may be required to be signed by uncompensated third parties, or a secured bond in the amount specified by the court.

This bill defines an “unsecured appearance bond” to mean an order to release a person upon his or her promise to appear in court and his or her unsecured promise to pay an amount of money, specified by the court, if he or she fails to appear as promised.

This bill authorizes a court, after a defendant has been released from custody, amend the release order to change the conditions of release, including any monetary bail, upon a change in circumstances.

This bill provides that a defendant who has violated the terms or conditions of release may be held in contempt upon a motion of the prosecuting attorney if the court finds:

- There is probable cause that the defendant has committed a crime while on pretrial release or there is evidence that the defendant has violated any condition of release; and,
- There is no condition or combination of conditions of release that would reasonably assure that the defendant will not flee or pose a danger to any other person or the community or the defendant is unlikely to abide by any condition or combination of conditions of release.

This bill requires each county to establish a pretrial services agency that would be responsible for gathering information about newly arrested persons, conducting pretrial risk assessments, preparing individually tailored recommendations to the court, and providing pretrial services and supervision to persons on pretrial release.

This bill authorizes an unnamed agency to oversee pretrial services agencies and to provide training and assistance on pretrial release to judges, prosecutors, defense attorneys, jail staff, law enforcement agencies, and pretrial services agencies.

This bill provides guidelines for the pretrial risk assessment tool which shall be selected by the unnamed agency or for existing pretrial risk assessment tools that are in compliance with these guidelines and that had been used by counties prior to the effective date of this bill.

This bill requires the Board of State and Community Corrections (BSCC), in consultation with the unnamed agency, to develop a plan that establishes statewide requirements for counties related to annual reporting of pretrial release and detention information, which includes at minimum information about the percentage of individuals released on pretrial, the percentage of those who fail to appear, those who commit new crimes while on pretrial release, and the rate of judicial concurrence with recommended conditions of release.

This bill requires each county to make publicly available its risk assessment tool guidelines, factors, weights, studies, data upon which validation studies rely, and information about how a risk assessment tool was reformed.

This bill states that it is the intent of the Legislature in enacting this act to safely reduce the number of people detained pretrial, while addressing racial and economic disparities in the pretrial system, and to ensure that people are not held in pretrial detention simply because of their inability to afford money bail.

This bill makes other conforming changes.

COMMENTS

1. Need for This Bill

According to the author of this bill:

In California, the median bail amount is \$50,000 – five times higher than the national median. On any given day, approximately 60% of people in jail in California are either awaiting trial or sentencing. Many of those in California’s jails are there for no reason other than the fact that they are unable to afford money bail.

Unnecessary pretrial detention compromises defendants’ ability to defend themselves against their accusers and threatens the integrity of the criminal system. Detained defendants are 25% more likely than similarly situated released defendants to plead guilty to a crime. The incentive to get out of pretrial detention is so strong that people even plead guilty to crimes they did not commit. Studies have likewise shown that, holding all other factors constant, individuals who are detained prior to trial suffer from greater conviction rates and more severe sentencing than those who are released prior to trial.

High bail amounts and pretrial detention also disproportionately impact people of color. Studies have shown that bail amounts are 35% higher and 19% higher for African American men and Hispanic men, respectively, than for white men. Among defendants for whom monetary bail is set, Black and Hispanic defendants are twice as likely to be detained pretrial than white defendants. The disparity in drug offenses is even more stark, with the likelihood of detention for Black and Hispanic defendants being 96% and 150% higher respectively, than the odds of detention for white defendants.

In addition to penalizing pretrial defendants, our current money bail system burdens California families as well. Even a short period of pretrial detention can result in loss of employment, housing, and public benefits for the detained person – costs that then must be borne by family members already struggling to make ends meet. Family members who are able to scrape together enough money to pay a non-refundable fee to a for-profit bail company to secure a loved-one’s release from jail often end up with long-term debt to the bail company, even when their loved one is innocent of any wrongdoing and is never convicted of a crime. These costs hit women the hardest, with 83% of court-related costs on behalf of a loved one being taken on by women.

...

SB 10 seeks to remedy California’s failing pretrial system by reducing reliance on money bail, supporting pretrial defendants with pretrial services, focusing detention resources on those who pose a risk of danger, reducing racial disparities, and ensuring that people are not left in jail simply because they cannot afford to pay for their release. Under SB 10, courts will evaluate whether an individual can be safely released from jail pending trial, and if so under what set of conditions to assure that the person will come to court as required and avoid committing crimes.

SB 10 draws from successful models around the country and in California. For example, Kentucky utilizes a risk-assessment system and no longer relies on commercial bail and releases 70% of its pretrial defendants (68% on non-financial releases). In Kentucky, 89% of released defendants make all future court appearances, and 92% are not re-arrested while on pretrial release. Santa Clara County has implemented a successful pretrial services model and has saved \$33 million in six months by keeping 1,400 defendants out of jail.

2. Bail Generally

Existing law provides a process whereby the court may set a bail amount for a criminal defendant. (Penal Code Section 1269b.) Additionally, Section 12 of Article 1 of the California Constitution provides, with limited exceptions, that a criminal defendant has a right to bail and what conditions shall be taken into consideration in setting bail. A defendant may post bail by depositing cash or an equivalent form of currency, provide a security in real property, or undertake bail using a bail bond.

The bail bond is the most likely means by which a person posts bail and is essentially a private-party contract that provides the court with a guarantee that the defendant will appear for a hearing or trial. A defendant pays a licensed bail agent a percentage of the total amount of bail ordered as a non-refundable fee – often an amount in the range of 10%. The bail agent will contract with a surety company to issue a bail bond – essentially, an insurance policy. The bond is issued providing that if the defendant fails to appear, the county will receive the full amount of bail set by the court. The bond is provided to the court and, if accepted, the defendant is released. As designed, the bail system often allows the court to rely on the private sector to ensure appearances and provide a means for the county to be made whole in the event that a person fails to appear.

While the main purpose of a bail bond is to provide some assurance that a defendant will return to court to resolve the pending charges, courts also consider the danger a released defendant will pose to the public or specific persons. Bail is set through a bail schedule that lists preset amounts of bail for various crimes. A committee of judges in each county promulgates the bail schedule for that county. (Pen. Code § 1269b, subd. (c).) A defendant or the prosecution can move the judge presiding over a particular case to raise or lower the amount of bail, or the defendant can request release on his or her own recognizance. (Pen. Code § 1275.) Additional statutory rules apply if the defendant is charged with a serious felony or domestic violence. (Pen. Code § 1270.1.)

The existing bail system has come under scrutiny because of claims that it does not promote public safety and it unfairly penalizes defendants who are poor while allowing defendants who have means to buy their way out of jail. (*California's Bail System Punishes the Poor, and It's Time for the Government to Do Something About It*, Skelton, Los Angeles Times (Jan. 16, 2017) <<http://www.latimes.com/politics/la-pol-sac-skelton-california-bail-system-20170116-story.html>> [as of Mar. 18, 2017].) Lawsuits have been filed across the country, including the cities of Sacramento and San Francisco, under the theory that the current bail system unfairly discriminates against the poor in violation of the Fourteenth Amendment's Equal Protection Clause. (See <<http://equaljusticeunderlaw.org/wp/current-cases/ending-the-american-money-bail-system/>> [as of Mar. 28, 2018].)

The Legislature has responded to the push for bail reform with bills that would implement major changes to the system, such as this bill and AB 42 (Bonta). The Judiciary has separately set up a working group to study current pretrial detention practices and provide recommendations for potential reforms. (*Chief Justice Appoints Working Group to Recommend Changes in Pretrial Detention* (Oct. 28, 2016) <<http://newsroom.courts.ca.gov/news/chief-justice-appoints-working-group-to-recommend-changes-in-pre-trial-detention>> [as of Mar. 18, 2017].)

3. Alternative to Bail: Own Recognizance Release

In cases where the defendant is likely to return to court and where the safety of the public or specific persons will not be put at risk, a court can release someone on his or her own recognizance (OR). This includes both felonies and misdemeanors. An OR release is essentially release without payment of bail pending trial or other resolution of a criminal case.

In order to be released on OR,

[T]he defendant signs a release agreement promising to appear at all required court hearings in lieu of posting bail. Before granting an OR release, the judge must evaluate the defendant's flight risk by considering the defendant's ties to the community, whether the defendant has a past record of failures to appear in court, and the possible sentence the defendant faces if convicted. The judge must also evaluate risk to public safety by considering any threats that have been made by the defendant, as well as any record of violent acts.

In counties with active pretrial programs, the judge may consider pretrial reports and recommendations based on interviews and evaluations that assess the defendant's public safety and flight risk. For example, in Marin County, the county probation department contracts with an independent agency that provides pretrial services. Using an evidence-based pretrial risk-assessment tool, agency staff evaluates eligible defendants along three

dimensions: criminal history, employment and residential stability, and drug use. Following a verification process and an evaluation of danger to self or others, the agency prepares a recommendation along with a report. After approval by the probation department, the report is submitted to the court. In addition to supplying the court with recommendations and reports, these programs may also offer a range of conditional release options. These release options may include release on electronic monitoring, release with alcohol monitoring, or release to home detention. If pretrial release is not granted and bail is fixed by the court, realignment legislation also permits the sheriff to authorize the pretrial release of inmates. Under the legislation, a county board of supervisors must first designate the sheriff as the county's correctional administrator and may then authorize the correctional administrator to place pretrial jail inmates who do not pose a significant threat to public safety in an electronic monitoring program when specified conditions are met.

In some instances, an unsentenced jail inmate who has not posted bail may be released due to jail overcrowding. At implementation of realignment, 17 counties were operating under court orders that limit the number of inmates they can hold at one or more of their county facilities. Statewide, in the year before realignment, the average annual jail population was 71,060, and releases due to lack of capacity numbered 6,800 per month for unsentenced inmates and 3,900 per month for sentenced offenders.

(Tafoya, *Assessing the Impact of Bail on California's Jail Population*, Public Policy Institute of California (June 2013), p. 8 (citations omitted).) If a judge determines that a person should not be released on OR, then the judge can set bail with the bail schedule as a guide.

This bill repeals the current section in the Penal Code authorizing OR release and instead implement a new pretrial release procedure that would allow most people to be released, either with or without conditions, or with money bail if the court determines that it is necessary.

4. Ongoing Concerns over County Jail Populations

The most recently available data from the BSCC shows that the majority of jail inmates are unsentenced, roughly 62 percent of the population. Data shows that California relies more heavily on pretrial detention than the rest of the United States. (Sonya Tafoya, *Pretrial Detention and Jail Capacity in California*, Public Policy Institute of California (July 2015) <http://www.ppic.org/main/publication_quick.asp?i=1154> [as of March 15, 2017].) This dynamic strains the capacity of county jails making it necessary to release sentenced inmates, while people who have not been found guilty of any crimes wait in jail because they have not been released on OR and cannot afford to post bail.

This bill would help relieve jail overcrowding by limiting the persons who could be detained pretrial to offenders who have committed certain violent crimes.

5. The Effect of this Legislation

This bill makes several changes to the pretrial release procedures in current law.

Existing law requires each county to establish a countywide bail schedule which is used by the jails upon arrest and by the courts during arraignment to determine the amount of bail in each case. This bill does away with the countywide bail schedules and instead provides that upon

arrest and booking into a county jail, the pretrial services agency shall conduct a pretrial assessment on the person and prepare a report that contains recommendations for whether the person should be released without conditions or with the least restrictive condition or conditions. In most cases involving a misdemeanor, the arrested person must be released by pretrial services upon signing a release agreement. In most felony cases, pretrial services will transmit the pretrial services report to an on-call judge, magistrate, or commissioner who will then review the pretrial services report and order that the person be released either without conditions, or with the least restrictive conditions. If a person is arrested for certain specified felonies or misdemeanors involving violence, the person cannot be released until his or her arraignment.

Existing law requires a person to be arraigned on their case within 48 hours, unless the person is arrested on Wednesday night and Friday is holiday which means that a person can remain in jail prior to arraignment for 4 days. This bill requires, if a person is arrested on a Wednesday night and that following Friday is a court holiday, the person to be arraigned on Thursday.

Existing law authorizes a judge to set bail at arraignment or separate bail hearing using the countywide bail schedule as a guide, with the ability to set bail at a higher or lower amount. The judge may also deny bail in certain situations or set bail in an amount that is restrictively high that would result in a defendant remaining in custody. The judge may also use his or her discretion to release a person on OR in any case not involving a capital crime.

As stated above, this bill gets rid of the county bail schedules and instead requires release at arraignment unless a pretrial detention motion is filed by the district attorney. At arraignment, the court is first required to consider releasing the person without any conditions, and if the court determines that releasing the person without conditions will not reasonably assure that the person will come back to court as required and assure that the defendant will not commit new crimes, the court can place nonmonetary conditions on the defendant. These conditions must be the least restrictive and the person cannot be required to pay for any conditions. Only if the court finds that the person cannot be released with nonmonetary conditions in such a way that will reasonably assure that the person will come back to court as required, can the court consider money bail. If the court imposes money bail, it must make a determination that the person has the present ability to pay and that the amount of bail ordered does not cause substantial hardship on the defendant, as defined. This bill authorizes the use of an unsecured bond or a secured bond to make bail.

This bill also provides that a person who is released pretrial may have the order modified by motion of the district attorney or defense based on a change in circumstances. Also, if a defendant has been ordered released but is still in custody after five days due to a condition of release that the defendant cannot meet, the defendant is entitled to automatic review of the order.

This bill only authorizes the pretrial detention of a person if the court finds that the person falls into one of the following categories, which is consistent with the California Constitution provisions on bail:

- The defendant has been charged with a capital crime and the facts are evident or the presumption great;
- The defendant has been charged with a felony offense involving an act of violence on another person, or a felony sexual assault offense on another person, the facts are evident or the presumption great, and the court finds based upon clear and convincing evidence

that there is a substantial likelihood the person's release would result in great bodily harm to another person or persons; or,

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

Existing law does not require counties to use a pretrial risk assessment tool and does not provide any statewide standards for pretrial assessment tools used by counties. This bill requires an agency, to be later determined, to pick a pretrial assessment tool for counties to use that meet certain specifications that are designed to avoid bias in release decisions. Counties that are already using pretrial assessment tools may continue to use them as long as they meet the required specifications. This bill requires counties to annually report to the state pretrial release and detention information, which includes at minimum information about the percentage of individuals released on pretrial, the percentage of those who fail to appear, those who commit new crimes while on pretrial release, and the rate of judicial concurrence with recommended conditions of release.

This bill requires each county to develop a pretrial services agency that meets the following specifications:

- Uses methods that research has proven to be effective in reducing unnecessary detention and to employ the least restrictive interventions and practices;
- Ensures that services provided are culturally and linguistically competent;
- Ensures that all policies and practices are developed and applied to reduce or eliminate bias based on race, ethnicity, national origin, immigration status, gender, religion, and sexual orientation; and,
- Assists pretrial defendants with complying with their conditions of release and to address noncompliance with pretrial services requirements administratively.

Under existing law, if a person is released on OR and he or she violates the terms of release or is arrested on a new charge, the person's release may be revoked and the court may either set money bail, re-release the person with new conditions or hold the person in contempt. Under the provisions of this bill, if a person is believed to be in violation of a condition of release the court may modify the release order to add conditions. In order to hold a person in contempt, the court must hold a hearing to determine whether there is probable cause that the person has committed a crime while on pretrial release or that the person has violated a condition of release and the court must determine that there is no condition or combination of conditions of release that would reasonably assure that the defendant will not flee or pose a danger to any person in the community, or that the person is unlikely to abide by any conditions of release.

6. Arguments in Support

According to Ella Baker Center for Human Rights, a co-sponsor of this bill:

This bill seeks to significantly reduce the reliance on the money bail system that punishes poverty. In its place, the bill establishes a robust pre-trial services program and the usage of a validated risk-assessment tool to determine the safe release of people, pending the resolution of their cases. It is a common sense,

practical approach to enhancing public safety in California and is in line with a growing momentum of jurisdictions across the country to reduce the impact of the predatory money bail system.

In California, nearly 2/3 of the people sitting in jail are either awaiting trial or sentencing, at a significant cost to the state and vulnerable families. The State spends \$5 million per day to lock up people who are waiting to go to court—totaling more than \$1.8 billion annually. Families are forced to make the difficult decision between covering their basic needs like housing and paying the bail bonds agency. Families that cannot afford the 10% fee often go on payment plans that perpetuate the cycle of poverty. When a person remains in jail because they cannot afford bail, others may need to fill the financial gap he or she leaves behind, forcing family members to drop out of school to get a job, or quitting a job to take care of children that are left behind.

Further, people forced to stay in jail because they cannot afford bail face a number of additional obstacles. Many people take coercive plea deals in order to avoid waiting for trial so they can get back to their lives and familial obligations. Research has shown that compared to people who are released prior to trial, those held for their entire pretrial detention have a greater likelihood of being sentenced to jail. Studies have also shown a strong correlation between length of detention and recidivism. Compared to people who were held no more than 24 hours, those held for 8 to 14 days were 51% more likely to go back to jail for another crime. Pre-trial detention as a result of inability to pay bail can also result in loss of employment, housing, child custody rights, etc. Black men are not only less likely to be released on their own recognizance, their bail amounts are also 35% higher on average than white men. Most alarmingly, nearly 80% of all jail deaths in California occur among people who are detained pre-trial.

People of color are already over-represented in the criminal justice system and current pre-trial detention practices exacerbate these disparities. The current system of bail was designed to most severely impact those who can least afford it. SB 10 provides California with the opportunity to decriminalize poverty, reduce racial disparities, and enhances public safety outcomes.

7. Arguments in Opposition

According to the Golden State Bail Agents Association:

This bill would require the court to release a defendant being held for a misdemeanor offense on his or her own recognizance unless the court makes an additional finding on the record that there is no condition or combination of conditions that would reasonably ensure public safety and the appearance of the defendant if the defendant is released on his or her own recognizance.

SB 10 would endanger public safety by forcing the release of these high risk misdemeanor defendants without bail. Bail is an important public safety tool because it is paid for by the defendants family and close friends who cosign the bail agreement vouch for the defendant. These cosigners now have a financial incentive to make sure defendant attends all of his or her court dates. It is only

going to court that defendant can be compelled to attend drunk driving and domestic violence intervention programs that can make a positive difference in a defendant's life and end the cycle of domestic abuse or drunk driving.

According to the Los Angeles Police Protective League:

California Chief Justice Cantil-Sakauye has formed the Pretrial Detention Reform Work Group to address the bail issues from a global perspective. Our understanding is that the Work Group's recommendations will be provided to Chief Justice Cantil-Sakauye in December 2017.

In order to assure that any Legislative action is made with full knowledge of the Judicial Council's Pretrial Detention Reform Work Group's recommendation we believe that Senate Bill 10 should be deferred until after those recommendations are available.

-- END --

Bail Reform Legislation Discussion
Attachment Five
PPIC: Pretrial Release in California Report



May 2017

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*Supported with funding
from the National
Institute of Justice*

Pretrial Release in California



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SUMMARY

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Technical appendices to this report are available on the PPIC website.

To further reduce reliance on incarceration without compromising public safety, state policymakers are currently considering reforming California's pretrial system. Key questions for reform include whether the state holds too many defendants in jail pending trial and whether bail is an equitable form of pretrial release.

This report uses newly available data to provide information about pretrial release in California and to give policymakers a better understanding of the defendants who tend to be released and the form of release they secure.

Examining jail bookings and releases from 11 counties from 2011 to 2015, this study finds:

- **Overall, 41.5 percent of individuals booked on misdemeanors or felonies are released pretrial.** The most common types of pretrial release include cite and release after booking (46.6%), bail (27.8%), and release on recognizance (15.9%).
- **Pretrial release is more common for less serious offenses.** About half of individuals booked on misdemeanors were released pretrial, compared with 29.8 percent of those booked on felonies.
- **For more serious offenses, bail is the predominant form of pretrial release.** Although pretrial release rates are low overall for more serious offenses, those who secure release tend to do so through bail. This is true for individuals charged with felonies or serious, violent, or sexual offenses. In contrast, the most common form of pretrial release for misdemeanors is cite and release.
- **Pretrial release is less common for those with active warrants, holds, or supervision violations at booking.** Among those with active warrants, about one-third (33.7%) are released pretrial. Pretrial release for those with holds (17.3%) or supervision violations (15.8%) is even less common.
- **Pretrial release rates across demographic groups merit further study.** Thirty-eight percent of Latinos and 33.7 percent of African Americans are released pretrial, compared with 48.9 percent of whites and 54.6 percent of Asian Americans. But gaps in pretrial release rates for Latinos and African Americans narrow to less than 2 percentage points, compared with whites, after we account for differences in offense characteristics, booking status, and the month and county of booking.

Pretrial risk assessment has been cited as a potential tool to help law enforcement and the courts identify defendants who pose a low risk to public

safety, are likely to appear for their court date, and can therefore await trial in the community. Future PPIC research will further examine the relationship between pretrial release and public safety risk for different groups of offenders. As policymakers consider changes to California’s pretrial practices, a more comprehensive portrait of how the state’s current system functions can help clarify whether reforms are likely to improve public safety and ensure court appearances.

Introduction

In California, there are roughly 76,000 jail bookings each month.¹ After booking, defendants who are awaiting trial may be held in jail (known as pretrial detention) or released by law enforcement or the courts (pretrial release). Recent concerns about the state's heavy reliance on pretrial detention and the equity of the bail system have led state legislators to introduce two bills during the 2017–18 legislative session to reform California's pretrial practices.²

Pretrial detention, which aims to ensure court appearances and maintain public safety, is common in California. Most of the state's jail population—64 percent, or 46,000 inmates—are unsentenced defendants awaiting arraignment, trial, or sentencing.³ These individuals account for nearly a quarter of the total population incarcerated in the state's jails and prisons.⁴ Yet previous PPIC research finds that, despite heavy reliance on pretrial detention, California does not see higher rates of court appearances or lower levels of felony rearrests. An analysis of 2000–2009 data from the US Department of Justice reveals that the state's large urban counties relied more heavily on pretrial detention of felony defendants (59% detained), compared with other large urban counties in the United States (32% detained), even after accounting for differences in the composition of defendants. But the state still had higher rates of failure to appear in court and higher levels of felony rearrests during the pretrial period (Tafoya 2015).

Release on bail—one of the most common forms of pretrial release—is the part of the pretrial system most often targeted for reform (Judicial Council of California 2016a, 2016b).⁵ Defendants who post bail offer a financial guarantee to courts that they will appear for mandated hearings. But ongoing litigation in two California counties alleges that the use of bail schedules is discriminatory based on wealth status and that bail practices in the state unjustly result in the overdetection of poor defendants who pose a low risk for pretrial misconduct.⁶

Advocates of the current system argue that the use of bail is a constitutional and effective means of ensuring court appearances, with the added benefit of operating at no cost to the taxpayer. In contrast, proponents of bail reform maintain that release decisions should be based solely on arrestees' risk of failing to appear in court and their risk of reoffending if released while awaiting trial. In particular, concern over the detention of low-risk defendants has increased, as a growing body of research suggests otherwise similar arrestees have a higher likelihood of conviction, are given harsher sentences, and have higher rates of post-disposition recidivism if they are detained rather than released pretrial (Stevenson 2016; Gupta, Hansman, and Frenchman 2016; Sacks and Ackerman 2014; Lowenkamp, VanNostrand, and Holsinger 2013). Conversely, release on bail can imperil public safety by

¹ Bookings per month based on monthly average from January 2015 to December 2015, according to the Board of State and Community Corrections [Jail Profile Survey](#).

² These bills are Senate Bill 10 and Assembly Bill 42 (Office of Senator Robert Hertzberg 2016; Office of Assemblymember Robert Bonta 2016). See the California Legislative Information website for the current status of the [senate bill](#) and the [assembly bill](#).

³ Total jail population based on total jail ADP (average daily population) and unsentenced jail ADP in the Board of State and Community Corrections [Jail Profile Survey](#) as of December 2015. This estimate provides a snapshot of the number of unsentenced individuals in the jail system at any given time. However, the number of unsentenced individuals that flow through the jail system over the course of one year is much higher than the number captured in this snapshot. The number of unsentenced inmates represents an upper bound estimate of the pretrial population. The unsentenced population is not synonymous with the pretrial population that is potentially eligible for release. Counties are instructed to count a defendant as unsentenced even if the defendant has been sentenced for one crime but has another case pending. An inmate may also be counted as unsentenced if he or she has been convicted of a crime but is awaiting sentencing. No systematic review of counties has been conducted to determine how parole and probation violators are counted and under what circumstances they are classified as sentenced versus unsentenced.

⁴ Total prison population based on the California Department of Corrections and Rehabilitation [Monthly Report](#) from December 31, 2015.

⁵ Also, in 2015 the US Department of Justice filed a statement of interest arguing that bail practices that incarcerate indigent individuals before trial solely because of their inability to pay for their release violates the Fourteenth Amendment. See U.S. SOI, *Varden v. City of Clanton*, No. 2:15-cv-34, 2015 WL 5387219 (M.D. Ala. Sept. 14, 2015).

⁶ See *Buffin v. City and County of San Francisco*, Case No. 15-cv-04959-YGR, United States District Court, N.D. See also *Welchen v. County of Sacramento and Kamala Harris in her Official Capacity as California Attorney General*, Case No. 16cv00185-TLN-KJN United States District Court, E.D.

allowing those who pose a high risk of pretrial misconduct a way to secure release if they have the financial means to post bail.

The current push for changes to pretrial processing comes on the heels of two major reforms that have lessened California’s reliance on incarceration and reprioritized correctional resources. In 2011, the state implemented public safety realignment, which transferred responsibility for non-serious, non-violent, and non-sexual felonies from state prison and parole to county jail and probation.⁷ The prison population declined and state prisons became custodial facilities that were used more exclusively for those convicted of serious, violent, or sexual crimes.⁸ Realignment initially led to overcrowding in jails, which was alleviated somewhat by the enactment of Proposition (Prop) 47 in 2014. Prop 47 limited the circumstances under which common offenses, such as drug possession and theft, could be charged as felonies.⁹ Jail bookings declined—mostly due to reduced bookings of individuals for Prop 47 offenses—and pretrial releases increased among those held for these offenses (Bird et al. 2016). Prop 47 essentially marked a shift away from the use of jail resources for lower-level drug and property offenders (Grattet et al. 2016).

In this changing policy environment, identifying effective pretrial reforms requires an understanding of the size and composition of the pretrial population, beginning with who comes through the front doors of the jail system. This research draws on newly available data collected through an ongoing collaboration between PPIC, the California Board of State and Community Corrections (BSCC), and a group of counties representative of the state.¹⁰ The PPIC–BSCC Multi-County Study (MCS) captures individual jail entries and exits, thus providing foundational information on how pretrial release is operating in California and informing the debate over pretrial processing and bail reform. Overall, the MCS aims to help policymakers identify cost-effective corrections and supervision policies that would reduce recidivism.

This report begins by describing the pretrial process and presents rates of pretrial release by type. We then analyze whether pretrial release rates changed after Prop 47. Next, we examine the relationship between pretrial release and offense characteristics, booking status, and demographics. We also look at the relationship between offense characteristics and forms of pretrial release. This research does not offer a casual analysis of factors that lead to pretrial release but rather describes patterns in how pretrial release is used. We expand on earlier research by including both felony and misdemeanor bookings as well as both large urban counties and more sparsely populated counties.¹¹

⁷ After realignment, the composition of jails shifted modestly as pretrial detainees and those serving misdemeanor sentences were displaced by convicted felons and parolees serving time for supervision violations (Lofstrom and Raphael 2013).

⁸ California’s Public Safety Realignment Act was implemented on October 1, 2011 in response to a federal court decision (upheld by the Supreme Court) that the state was in violation of cruel and unusual punishment protections due to the failure of the prison system to provide adequate health care. The court ordered California to reduce its prison population to 137.5 percent of rated capacity.

⁹ On November 4, 2014, California voters enacted the Safe Neighborhoods and Schools Act. This law (Prop 47) reduced most drug possession offenses and thefts of property valued under \$950 to misdemeanors and allowed eligible offenders who had served or were serving a felony sentence for a Prop 47 offense to apply to the court for a reclassification of the sentence or of the crime from a felony to a misdemeanor. Those previously convicted of murder, rape or other sexual offenses, or certain gun crimes are not eligible for Prop 47 penalty reductions. Judges also have the discretion to deny petitions for resentencing if they determine that the petitioner poses a threat to public safety.

¹⁰ The following 12 counties are participating in the BSCC–PPIC MCS: Alameda, Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. Data from Alameda County are not yet complete, and therefore, Alameda is not included in this analysis. The 11 counties included in this analysis account for more than half of California’s jail population.

¹¹ Prior analysis (Tafoya 2015) was conducted using data from the State Court Processing Statistics (SCPS). That analysis was based on data from 2000–2009 and was restricted to felony charges that were filed in large urban counties.

Pretrial Processing and Release Opportunities

Following a jail booking, there are multiple points at which pretrial release may be secured, and these points differ depending on whether the charged offense is a felony or misdemeanor. Figure 1 shows these opportunities for pretrial release, beginning with an initial contact between law enforcement and the suspect (i.e., an arrest).

With some exceptions, law enforcement has the authority to “cite and release” those arrested on misdemeanor charges in the field instead of booking them into jail. Booking officers are also authorized to cite and release most individuals arrested on misdemeanor charges upon completion of booking.¹² For jail facilities operating under a court-imposed population cap, the sheriff is authorized to make capacity releases when the jail exceeds its mandated population threshold. Those who are not cited and released or released due to capacity constraints may still be eligible for release before their first court appearance through the payment of bail.¹³ Arrestees unable to secure release through any of the above means will remain in pretrial detention until arraignment.¹⁴ At arraignment (the defendant’s first court appearance) and for the duration of pretrial detention, the court may set or adjust the bail amount or release bail-eligible defendants on their own recognizance. When released on recognizance, the defendant signs a promise to appear for the next court date and agrees to the conditions of release set by the court.¹⁵

FIGURE 1
Pretrial release may be secured at multiple points following a jail booking

Arrest	Jail booking	First court appearance	Pretrial detention
<p>Release by law enforcement</p> <ul style="list-style-type: none"> • Field cite and release 	<p>Release by sheriff</p> <ul style="list-style-type: none"> • If entitled to bail, release on bail per scheduled bail amount • Cite and release • Unsentenced capacity release 	<p>Release by court</p> <ul style="list-style-type: none"> • Recognizance release (may include pretrial supervision) • Judicial discretion to set, raise, or lower the bail amount 	<p>Until conviction, exoneration, or dismissal of case</p> <ul style="list-style-type: none"> • Entitled defendant retains right to bail • Unsentenced capacity release • Judicial discretion to grant recognizance release or to set, raise, or lower the bail amount

SOURCE: PC §§ 853.6, 1269, 1270, and 1318–1319.5.

NOTE: Court orders authorize the sheriff to release pretrial detainees on “capacity releases.”

¹² In this report we refer to release by a law enforcement officer in the field as a “field cite and release.” If the arrestee is released after booking in a county jail, we refer to it here as a “cite and release.” This analysis does not include data on field cite and releases. Penal Code §§853.6, 1270 govern the release of those arrested for misdemeanors. Under most circumstances, law enforcement has the authority to release a misdemeanor arrestee in the field with a citation. However, citations cannot be issued for offenses involving domestic violence or abuse (unless the officer determines there is not a reasonable likelihood that the offense will continue). Nothing in the law prevents an officer from booking the arrestee. The booking officer, under most circumstances, also has the discretion to cite and release a misdemeanor arrestee after booking, unless the offense requires a bail hearing.

¹³ For a defendant’s right to bail and exceptions, see Penal Code §1271 and California Constitution Article 1 §§12, 28(f)(3). For discharge from custody on bail, see Penal Code §§1268, 1269, 1269b. For local court responsibility for bail schedule and basis for bail amounts based on seriousness of charge, see Penal Code §1269b(e).

¹⁴ Penal Code §825 states that defendants in custody must be arraigned within 48 hours of arrest, excluding Sundays and holidays.

¹⁵ Penal Code §§1318-1319.5, 1270 govern release on one’s own recognizance.

Types of Pretrial Release

Table 1 shows the number and percentages of individuals securing different types of pretrial release among the counties participating in the MCS. From October 2011 to October 2015, 41.5 percent of individuals booked into jail secured pretrial release, accounting for about 648,000 releases.¹⁶ Among those who secured pretrial release, cite and release (46.6%) and bail (27.8%) were the most common forms of release.¹⁷ Supervised pretrial release (3.2%) was the least frequent form of release. With supervised pretrial release, the court grants the defendant release but also sets specific terms of release. Common conditions for release on pretrial supervision include weekly check-ins, drug testing, electronic monitoring, or home detention.

TABLE 1

Cite and release is the most common form of pretrial release, followed by bail

Release type	Number	Percent	Median length of stay (days)
Cite and release	301,991	46.6%	1
Bail	179,901	27.8%	2
Own recognizance	103,152	15.9%	3
Unsentenced capacity release	42,404	6.5%	2
Supervised pretrial release	20,843	3.2%	2
All releases	648,291	100.0%	2

SOURCE: Author calculations based on the BSCC–PPIC Multi-County Study data (2011–2015).

NOTES: This table includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. Length of stay is equal to one for same-day releases, two for a next-day release, etc.

For those who secure any form of pretrial release, the median length of stay is one to three days. Individuals who are cited and released are generally released within hours, as booking officers are authorized to make these releases once the booking process is complete. Bail releases tend to take more time because, following booking, the arrestee must secure the funds to post bail. Generally, those who make bail are released the day after booking. Recognizance releases are nonfinancial, like cite and release, but the courts are responsible for recognizance releases. In some counties, court officers are on call around the clock to grant these releases. When a court officer is not on call, the courts generally grant release on recognizance at arraignment. This generally occurs within 48 hours of booking.

¹⁶ Total jail bookings in MCS counties for this period were 1,980,653. In the analysis, we refine the universe of all bookings to exclude the following categories: individuals under age 18 (<0.1%); individuals booked on offenses unlikely to be eligible for pretrial release, including commitments to serve sentences, transfers, holds only, detention only, and supervision violation only (15.9%); and individuals with missing data on booking type or charge (0.9%). We also exclude individuals booked on infractions (4.2%). Taken together, these exclusions sum to 21 percent of all bookings.

¹⁷ Most county jail information systems are not set up to retain information about the bail amounts, bail payments, and those who are detained because of an inability to pay bail. In many systems, the bail amount is maintained in the system as a live field indicating the amount due. As a result, the bail amount is reset to zero when the inmate is physically released.

Pretrial Release Before and After Proposition 47

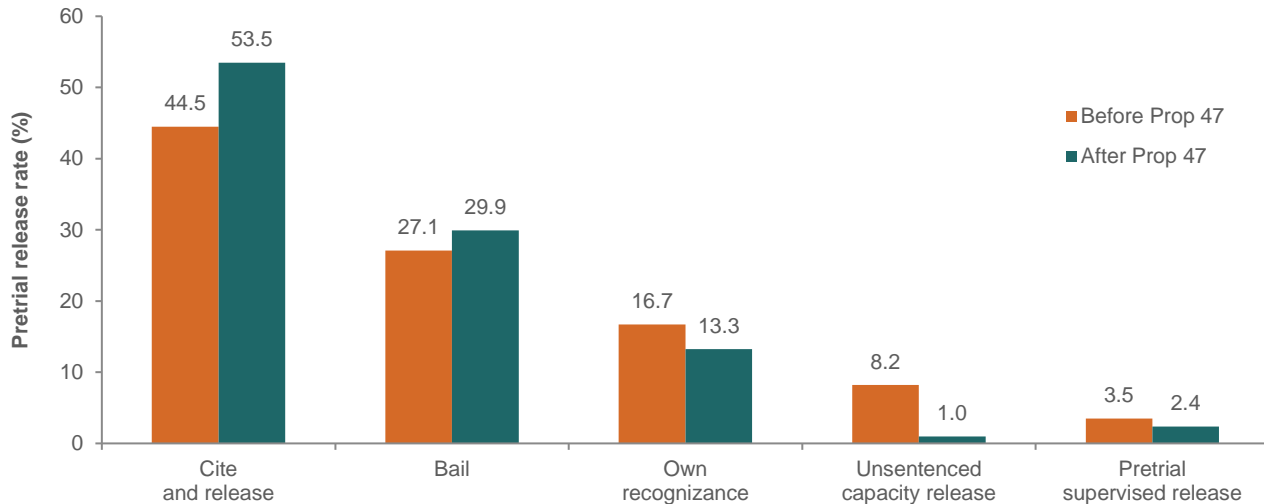
Prop 47 reduced the penalties associated with specific, lower-level drug and property offenses by requiring prosecutors to charge eligible defendants with misdemeanors rather than felonies.¹⁸ Prop 47 was expected to reduce the number of individuals detained pretrial both because law enforcement could cite and release in the field, instead of booking misdemeanants into jail, and because those booked into jail on misdemeanors would be more likely to secure release than those booked on felonies.

We find that pretrial release rates did not change under Prop 47. However, it is important to keep in mind that the release rate represents the share of those booked into jail that then secured pretrial release. As anticipated, under Prop 47, the total number of individuals booked into jail declined as fewer individuals were booked for Prop 47 offenses (Bird et al. 2016). The policy change effectively reduced the overall level of pretrial detention by reducing the number of individuals who were booked into jail and, therefore, at risk for pretrial detention.

Although pretrial release rates remained steady at 41.5 percent of bookings, we see some changes in the breakdown of different forms of pretrial release before and after Prop 47. Figure 2 shows the shifts in pretrial release types. Under Prop 47, the use of cite and release increased from 44.5 percent to 53.5 percent of all pretrial releases. Release on bail also increased from 27.1 percent to 29.9 percent of all pretrial releases. In contrast, the use of unsentenced capacity releases dropped markedly after Prop 47, reflecting a reduction in jail population pressure (Grattet et al. 2016).

FIGURE 2

Under Prop 47, the share of capacity releases declined, while the share of cite and release increased



SOURCE: Author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015).

NOTE: This chart includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. The pretrial release rates are calculated as a share of all pretrial releases.

¹⁸ Those with prior convictions for offenses classified as serious, violent, or sexual are ineligible for penalty reductions under Prop 47.

Factors Related to Pretrial Release

Based on California’s legal framework, the likelihood of securing pretrial release should be associated with factors such as the characteristics of the offense (e.g., charge severity) and defendants’ status at booking. However, the likelihood of securing pretrial release might also be associated with defendants’ demographic characteristics. Below we provide descriptive findings of the relationship between pretrial release and offense characteristics, booking status, and demographics. It is important to note that the likelihood of pretrial release should also be related to defendants’ criminal history. The courts must consider defendants’ criminal history when making release decisions, but we do not have access to criminal history data at this stage of research.

Offense Characteristics

Offense characteristics can be described in various ways.¹⁹ Charge level—misdemeanor or felony—is one important gauge of severity, and within each charge level, offenses can have lower or higher degrees of severity, based upon the California Department of Justice’s offense hierarchy. Additionally, certain classes of offenses—for example, serious, violent, or sexual offenses—may be of particular concern for public safety and reduce defendants’ likelihood of securing pretrial release.²⁰

As described in more detail below, we see a strong association between offense characteristics and the likelihood of pretrial release. Individuals booked on more serious offenses—whether measured by charge severity or specific classes of offenses that may pose a risk to public safety—are generally less likely to secure pretrial release. See [Technical Appendix B](#) for the results of our regression analysis, which largely confirms these findings.²¹

Charge Severity

Table 2 provides an overview of some common offenses that fall into different categories of charge severity. Lower-level felonies and lower-level misdemeanors are the most common kinds of bookings (see [Figure A1 in the technical appendices](#)).

¹⁹ It is important to distinguish between the analysis of offense characteristics (including “severity”) in this report, which applies to booking offenses, and “risk” of pretrial misconduct, which applies to the individual who is booked. Although offense characteristics provide some indication of an individual’s risk of pretrial misconduct, factors such as age at current arrest, pending charges at the time of the offense, prior criminal history, and prior failures to appear are also needed to determine the risk of pretrial misconduct. Thus, without criminal history information, the extent to which these detainees are made up of low-risk arrestees and defendants is unclear (Laura and John Arnold Foundation 2016).

²⁰ A serious felony is one described in Penal Code §1192.7(c). A violent felony is one described in Penal Code §667.5(c). A sexual offense is one described in Penal Code §290.

²¹ In our multivariate regression model, which controls for the factors analyzed in this report (offense characteristics, booking status, demographic characteristics, month of booking, and county of booking), we find that individuals booked on misdemeanor offenses are more likely to be released than those booked on felony offenses and, for those charged with either misdemeanors or felonies, the likelihood of release is generally higher for lower-level offenses. We also find that individuals booked on offenses that are serious, violent, or carry enhancements are less likely to be released pretrial. However, in contrast to the descriptive findings, our regression analysis finds that those booked on sex offenses are 5.1 percentage points more likely to be release pretrial. Note, we are not able to control for criminal history factors at this time.

TABLE 2

Common offenses by charge severity

Charge severity	Common offenses
Misdemeanor (low)	Drunk and disorderly conduct, driving on a suspended license, shoplifting, driving under the influence (DUI), violation of a domestic violence protective order
Misdemeanor (high)	2nd degree burglary, domestic battery, assault and battery, controlled substance (CS) possession, narcotic CS possession, resisting arrest
Felony (low)	Drug sales, grand theft, motor vehicle theft, receive stolen property, CS possession, narcotic CS possession, burglary, child abuse, robbery
Felony (high)	Murder, rape, kidnapping, arson, transport and manufacture drugs, sex crimes, assault with a deadly weapon causing great bodily injury

SOURCES: Common offenses were determined by author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015). Offense severity categories are based on the California Department of Justice offense hierarchy.

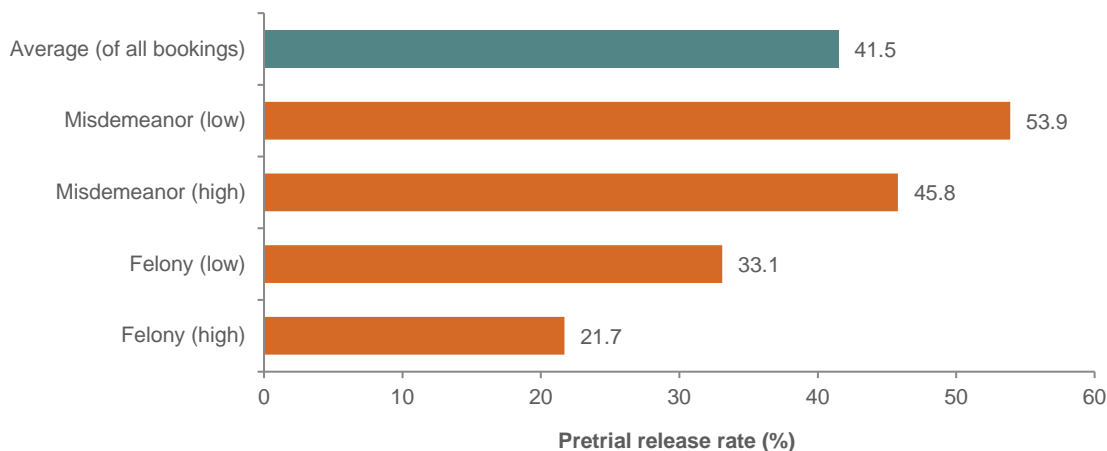
NOTE: Categories are based on the charge level of the most serious offense (misdemeanor, felony) and the rank of that offense in the California Department of Justice seriousness hierarchy. Certain offenses (e.g., CS possession) may be charged as a misdemeanor or a felony.

Figure 3 presents pretrial release rates by charge severity from October 2011 to October 2015. Generally speaking, pretrial release rates decrease as charge severity increases.²²

Overall, about one-half of individuals booked on misdemeanors are released pretrial. Those booked on lower-level misdemeanors have a pretrial release rate of 53.9 percent and those booked on higher-level misdemeanors have a release rate of 45.8 percent. In contrast, the overall felony pretrial release rate is notably lower, at 29.8 percent. About one-third (33.1%) of lower-level and less than one-quarter (21.7%) of higher-level felony bookings secure pretrial release.

FIGURE 3

Individuals booked on misdemeanors are more likely to be released pretrial



SOURCES: Author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015). Offense severity categories are based on the California Department of Justice offense hierarchy.

NOTES: This chart includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. The categories of charge severity are based on the charge level of the most serious offense (misdemeanor, felony) and the rank of that offense in the California Department of Justice seriousness hierarchy. For total bookings and pretrial releases, see [Figure A1 in the technical appendices](#).

²² These findings are consistent with California statutes that favor the pretrial release of those arrested on misdemeanor offenses (Penal Code §§853.6, 1270), as well as statutes requiring judges to base felony bail schedules on crime severity (Penal Code §1269b(e)).

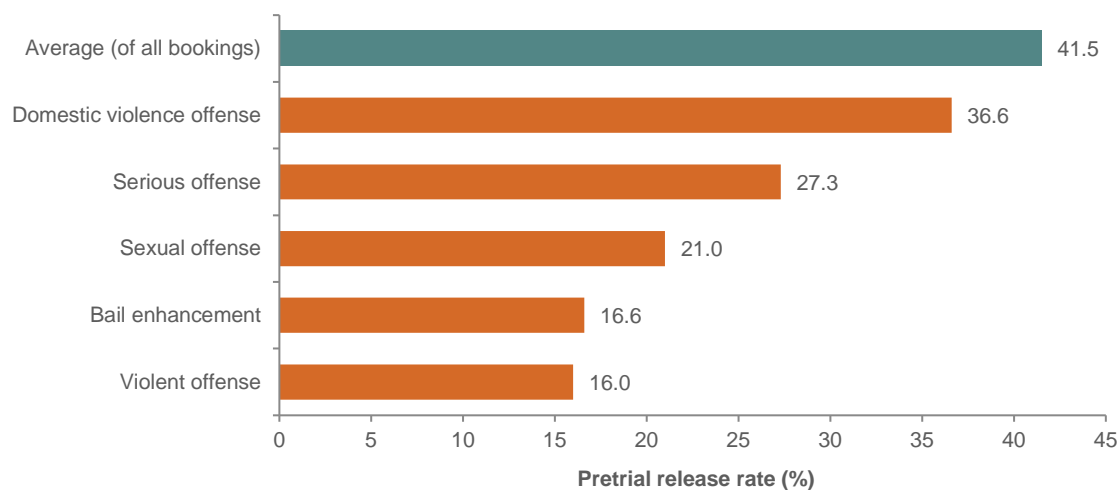
Specific Classes of Offenses

In addition, we see that individuals booked on specific classes of offenses that may pose a risk for public safety are less likely to be released pretrial. These findings may reflect state statutes that place restrictions on the pretrial release of those charged with these types of offenses.²³

Figure 4 shows that release rates are lower than average (41.5%) for those booked on domestic violence offenses (36.6%), serious offenses (27.3%), offenses requiring sex offender registration (21.0%), or violent offenses (16.0%).²⁴ The pretrial release rate for charges carrying bail enhancements, which increase the bail amount under certain circumstances, is also lower than average, at 16.6 percent.²⁵ Enhancements are common in cases that involve grave bodily injury, habitual offenders, or gang-related offenses.

FIGURE 4

Individuals booked on certain offense classes are less likely than average to secure pretrial release



SOURCE: Author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015).

NOTE: This chart includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. For total bookings and pretrial releases, see [Figure A2 in the technical appendices](#).

²³ For example, see Penal Code §1270.1 pertaining to charges classified as violent, serious, or domestic violence.

²⁴ These charge classes are not mutually exclusive but include all bookings in which there is any offense that qualifies. For example, the domestic violence category includes all bookings for which there is at least one booking offense related to domestic violence.

²⁵ For example, if a defendant is charged with the use of a weapon in the commission of a robbery, the total bail amount would be the base bail amount for the robbery charge plus a weapons enhancement.

Offense Characteristics and Forms of Pretrial Release

Compared to other forms of pretrial release, cite and release is most commonly used for individuals booked on less serious charges, while bail is more common for more serious offenses. In addition to securing pretrial release at higher rates than those charged with felonies, individuals charged with misdemeanors are more likely to secure nonfinancial forms of release. Cite and release is the most common form of pretrial release for misdemeanor bookings: among those released pretrial, 79.6 percent of lower-level misdemeanor bookings and 63.6 percent of higher-level misdemeanor bookings are cited and released. In contrast, the dominant form of release for felony bookings is bail. Among those booked on felonies who secured release, 52.4 percent of lower-level and 62.6 percent of higher-level felony bookings were released on bail. It is important to note that less than one-third of individuals booked on felony charges are released pretrial, as shown in Figure 3.

When looking at specific classes of offenses that tend to raise public safety concerns, we again find that, among those who secure pretrial release, the dominant form of release is bail. Among those who were released pretrial, release on bail was secured by 86.0 percent of those booked on sexual offenses, 76.3 percent of those booked on serious offenses, 68.3 percent of those booked on domestic violence offenses, and 68.1 percent of those booked on violent offenses. Among those booked on charges that carry bail enhancements who secured pretrial release, 71.7 percent were released on bail. Although pretrial release rates are low overall for individuals booked on these offenses, as shown in Figure 4, the vast majority of those who secure pretrial release do so through bail.

Booking Status

We also find that other booking factors are associated with a lower likelihood of pretrial release. A number of statutes reduce the likelihood of pretrial release for defendants with active warrants (arrest or bench warrants), supervision violations, or holds.²⁶ For example, individuals on probation who are arrested on new charges may be subject to bail enhancements. In addition, some defendants are subject to holds rendering them ineligible for release on bail, including those arrested on extradition warrants and those put on hold by a parole officer.²⁷

Nearly 40 percent of bookings included in this analysis had an associated warrant. Supervision violations, charges of failure to appear (FTA) in court, and holds were less common (see [Figure A3 in the technical appendices](#)). When looking at total bookings from October 2011 to October 2015, we find that release rates are lower than average (41.5%) for individuals who were flagged at booking with prior failures to appear (38.3%), active warrants (33.7%), holds (17.3%), or supervision violations (15.8%) (Figure 5). See [Technical Appendix B](#) for the results of our regression analysis, which largely confirms these findings.²⁸

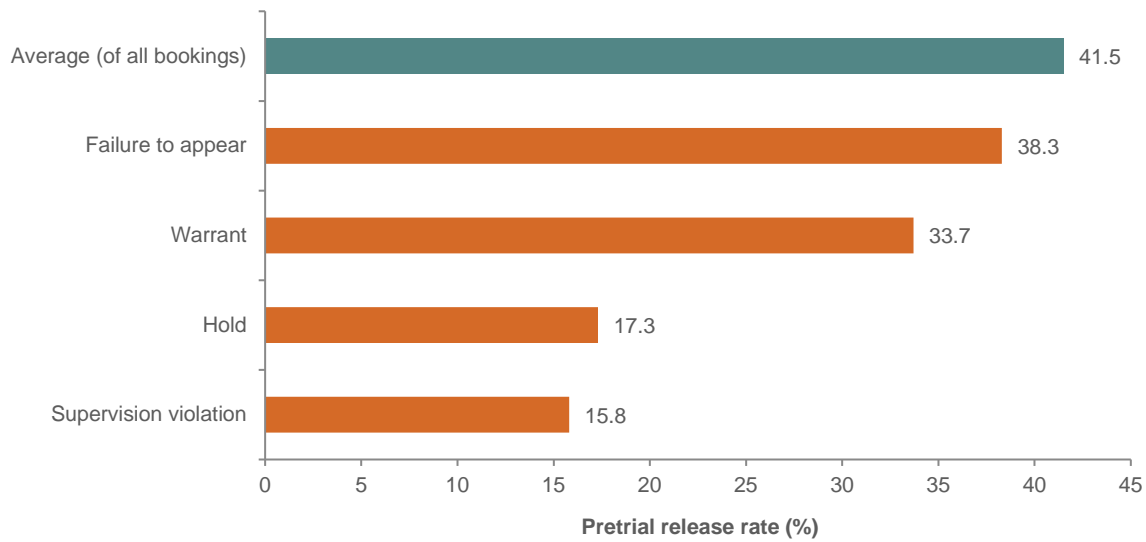
²⁶ Pursuant to Penal Code §12022.1, defendants charged with new felonies while released on bail or their own recognizance, as well as those under probation supervision, may be subject to bail enhancements. Pursuant to Penal Code §3056 and Code of Regulations §3750, supervising parole officers may place holds on defendants under specified circumstances. A hold may be imposed or a warrant issued for an inmate with outstanding legal matters either within the jurisdiction where they are charged or in another jurisdiction. Examples include: probation holds from another county or state, warrants issued due to failures to appear in court, arrest warrants, and holds due to new federal law violations.

²⁷ In our data there was no indicator for jail holds for Los Angeles County. Also, not all MCS counties collect sufficient data to identify the share of warrants that are warrants for FTA versus arrest warrants; here, only arrestees with a booking charge on a code section indicating an FTA are flagged as FTA bookings.

²⁸ Our regression model confirms that individuals with holds, warrants, or supervision violations are less likely to secure pretrial release. However, we find that those flagged as having FTAs are actually more likely to receive pretrial release than their otherwise similar counterparts. It is important to note that FTAs are not always

FIGURE 5

Pretrial release rates are lower for individuals with certain booking factors



SOURCE: Author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015).

NOTE: This chart includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. For total bookings and pretrial releases, see [Figure A3 in the technical appendices](#).

Demographics

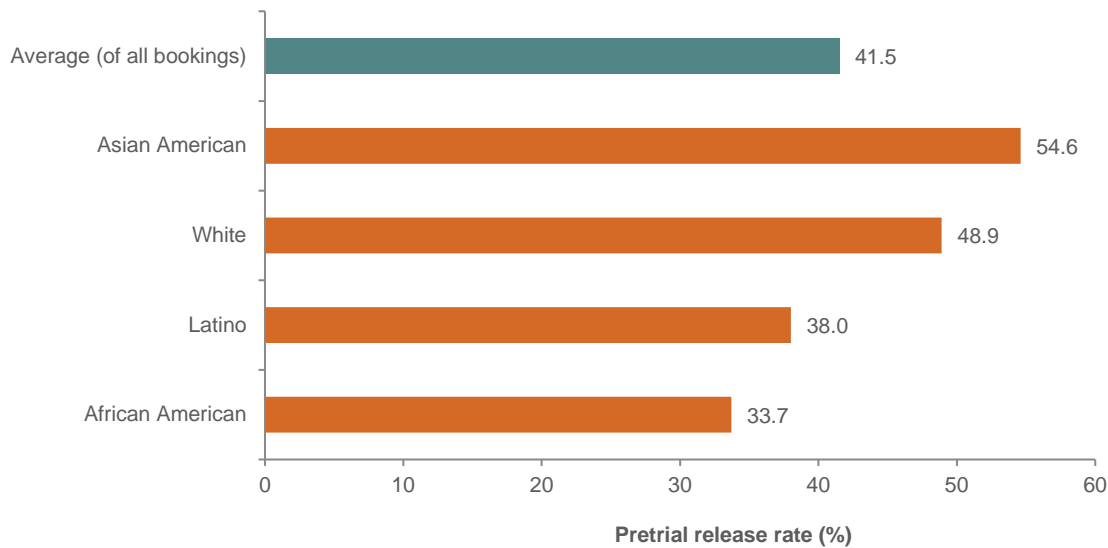
Despite concerns about potential racial and socioeconomic disparities in pretrial release, data capturing the demographic and economic characteristics of California’s pretrial detainees are limited. In this study, we are able to examine the race/ethnicity and gender of those who secure some form of pretrial release.

Figure 6 presents pretrial release rates by racial/ethnic group from October 2011 to October 2015. Asian Americans and whites have higher rates of pretrial release (54.6% and 48.9%, respectively), compared to the average of 41.5 percent. In comparison, Latinos and African Americans have rates of pretrial release that are lower than average (38.0% and 33.7%, respectively). We also find that females are somewhat more likely (48.8%) and males are somewhat less likely (39.5%) to secure pretrial release.

flagged at booking and may also be captured as warrants, which leads us to caution against drawing strong conclusions from this finding. It is also important to note that we are not able to include criminal history factors in this analysis at this time.

FIGURE 6

Differences in pretrial release rates across racial/ethnic groups merit further study



SOURCE: Author calculations based on the BSCC–PPIC Multi-County Study data (October 2011–October 2015).

NOTE: This chart includes data from the following counties: Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. For total bookings and pretrial releases, see [Figure A4 in the technical appendices](#).

Our preliminary analysis suggests that much of the difference in pretrial release across racial/ethnic groups appears to be driven by variation across counties. When accounting for differences in offense characteristics, booking status, and month of booking, we continue to see gaps in pretrial release rates across racial/ethnic groups.²⁹ When we also control for county, however, these racial/ethnic gaps in the likelihood of pretrial release narrow to a 1.5 percentage point difference between Latinos and whites and a 1.7 percentage point difference between African Americans and whites (see [Technical Appendix B](#)).³⁰ As noted above, data regarding criminal history, an important indicator of public safety risk that is known to vary across racial/ethnic groups, are unavailable at this time. Future PPIC research incorporating criminal history data will further clarify the relationship among pretrial release, demographic characteristics, and county of booking.

Conclusion

In California, rates of pretrial release have been low relative to the national average, yet rates of pretrial misconduct are generally higher. This suggests that California has room to improve its pretrial practices. As state legislators contemplate changes to the pretrial system, this report sheds light on how the current system operates.

We find that more serious offenses are strongly associated with a reduced likelihood of pretrial release. However, a fair number of individuals charged with less serious offenses are also detained pretrial: only one-half of individuals booked for misdemeanors and one-third of individuals booked on lower-level felonies secure some form of pretrial release. Bookings on these offenses make up the majority of jail bookings in California. With

²⁹ When controlling for offense characteristics, booking status, and booking month (but not county), we find that Latinos and African Americans are 12.0 percentage points and 13.8 percentage points, respectively, less likely to secure pretrial release, compared with whites. Regression results are presented in [Technical Appendix B](#).

³⁰ The gender difference in the likelihood of pretrial release narrows but persists, with females 4.0 percentage points more likely to be released pretrial than males.

appropriate use of pretrial risk assessment tools that account for criminal history, it may be possible to identify a subset of these offenders who pose a low risk to public safety and are appropriate candidates for pretrial release.

Pretrial risk assessment tools may also be useful in determining whether those individuals currently released through the bail system pose a high risk to public safety. Although a smaller portion of defendants booked on more serious charges secure pretrial release, those who do tend to be released through bail. This is true for individuals booked on higher-level felonies and those charged with serious, violent, or sexual offenses. Pretrial risk assessment could aid in determining when bail releases would pose an unacceptable risk to public safety.

In addition, we found low rates of pretrial release for individuals with active warrants and those booked with holds or supervision violations. Nearly 40 percent of bookings in our data had an associated warrant. Although we are unable to quantify how many of these warrants were issued for failures to appear in court, we do know that multiple jurisdictions across the country have successfully reduced failures to appear by instituting court date reminder systems (Nice 2006). This is a potentially cost-effective system for reducing pretrial detention levels and improving pretrial release outcomes.

Lastly, we find considerable variation in pretrial release rates across demographic groups and counties. Future PPIC research that incorporates criminal history data (currently unavailable) will help clarify the relationship between pretrial release, demographic characteristics, and county of booking. At this stage, we cannot say how much of this variation is attributable to differences in the public safety risk of counties' booking populations or to other county-level preferences or practices. This finding indicates, however, that counties may benefit from additional resources to invest in pretrial risk assessments and other tools that would allow them to explore whether their pretrial decision-making processes result in unnecessary pretrial detention or have disparate impacts on some demographic groups.

REFERENCES

- Bird, Mia, Sonya Tafoya, Ryken Grattet and Viet Nguyen. 2016. *How Has Proposition 47 Affected California's Jail Population?* Public Policy Institute of California.
- Grattet, Ryken, Sonya Tafoya, Mia Bird, and Viet Nguyen. 2016. *California's County Jails in the Era of Reform*. Public Policy Institute of California.
- Gupta, Arpit, Christopher Hansman, and Ethan Frenchman. 2016. *The Heavy Cost of High Bail: Evidence from Judge Randomization*. Columbia Law and Economics Working Paper No. 531
- Judicial Council of California. 2016a. "State of the Judiciary Address to a Joint Session of the California Legislature." By Chief Justice Tani Cantil-Sakayue. Judicial Council of California. Video, March 8.
- Judicial Council of California. 2016b. "Chief Justice Appoints Working Group to Recommend Changes in Pretrial Detention." Judicial Council of California. Press release, November 1.
- Lowenkamp, Christopher T., Marie VanNostrand, and Alexander Holsinger. 2014. *The Hidden Cost of Pretrial Detention*. Laura and John Arnold Foundation.
- Laura and John Arnold Foundation. 2016. *Public Safety Assessment: Risk Factors and Formula*.
- Lofstrom, Magnus, and Steven Raphael. 2013. *Impact of Realignment on County Jail Populations*. Public Policy Institute of California.
- Nice, Matt, 2006. *Court Appearance Notification System: Process and Outcome Evaluation*. A report for the Local Public Safety Coordination Council and the CANS Oversight Committee, prepared by the Budget Office of Multnomah County, Oregon.
- Office of Senator Robert Hertzberg. 2016. "Hertzberg Unveils Legislation to Reform Money Bail." Office of Senator Robert Hertzberg. Press release, December 5.
- Office of Assemblymember Robert Bonta. 2016. "Bonta Legislation will Reform Money Bail." Office of Assemblymember Robert Bonta. Press release, December 5.
- Sacks, Meghan, and Alissa Ackerman. 2014. "Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment?" *Criminal Justice Policy Review*, 25 (1): 59–77.
- Stevenson, Megan. 2016. *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*. SSRN, May 2.
- Tafoya, Sonya. 2015. *Pretrial Detention and Jail Capacity in California*. Public Policy Institute of California.

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ACKNOWLEDGMENTS

This project was supported by Award No. 2013-R2-CX-0010, awarded by the National Institute of Justice, Office of Justice Programs, US Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect those of the Department of Justice. The authors gratefully acknowledge the ongoing participation of the Board of State and Community Corrections and the participating counties in the BSCC–PPIC MCS. The report benefited from the thoughtful feedback of Magnus Lofstrom, Francine Byrne, Steve Raphael, Joseph Hayes, and Vicki Hsieh.

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Bail Reform Legislation Discussion
Attachment Six
Santa Cruz County: 2016 Adult Probation Annual Report

Santa Cruz County Probation Department

**Adult
Probation
Division
Annual
Report**

2016

The Adult Probation Division operates enhanced pretrial services, pre-sentence investigations for the criminal courts, and community supervision for formal probation and AB 109 offenders. In addition, the Division assists with case planning and re-entry services for local prison inmates (1170(h)); and provides contract oversight for AB 109 service providers, as well as other support services for probationers.

Prepared by
Division Director
Sarah Fletcher

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Introduction:

The Adult Probation Division operates enhanced pretrial services, pre-sentence investigations for the criminal courts, and community supervision for formal probationers and AB 109 offenders. In addition, the Division assists with case planning and re-entry services for local prison inmates (1170(h)); and coordinates the Community Corrections Partnership (CCP) and all work groups while providing -contract oversight for AB 109 service providers, as well as other support services for probationers.

Division Goal:

The Division is committed to research-based probation strategies to ensure public safety through the reduction of recidivism and victimization, and maximizing successful completion of supervision terms. This is accomplished through risk-based supervision; addressing issues that drive criminal behavior; consideration for custody alternatives; and providing services and interventions which are proven to reduce reoffending by matching the programs with individual needs. Furthermore, it is important that Probation is viewed as a strong alternative to incarceration and has the confidence of our criminal justice partners and the community as being a viable public safety option that reduces recidivism.

The Adult Probation Division has adopted the following key evidence-based supervision strategies to meet our goals, maximize resources, and be good financial stewards of public funds:

Key Supervision Strategies	Methods	How we are implementing strategies ...
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<ol style="list-style-type: none"> 1. Use empirically-based assessments to guide decisions. 2. Focus on criminogenic needs (drivers of criminal behavior). 3. Develop rapport/enhance intrinsic motivation. 4. Teach skills, role plays, and assign homework/skills practice. 5. Spend 20 minutes per session [with highest risk offenders]. 6. Match programming (responsivity). 7. Seek to achieve proper dosage [100-300 hours of programming for moderate to high risk cases]. 8. Redirect antisocial / criminal sentiments [as it occurs]. 	<ul style="list-style-type: none"> • Cap caseloads sizes • Ensure mastery of effective supervision practices techniques. • Focus coaching and training efforts on supervisors. • Acquire tools and skills. • Develop a CQI (continuous quality improvement) and coaching structure. • Alter policy and procedures as needed. 	<p>Utilization of a risk/needs assessment tools: CAIS; ODARA; Static-99R.¹</p> <p>Continuous right-sizing of supervision caseloads (focusing on the higher risk and specialized populations).</p> <p>Utilization of EPICS,² Thinking for a Change, cognitive workbooks, and other Cognitive Behavioral Interventions; Re-entry Services.</p> <p>Ongoing trainings to enhance evidence based skills, and increasing internal capacity with Training for Trainers.</p> <p>Utilization of Rewards / Incentives grid, as well as a Violation Response grid.</p> <p>Continued Revision of Policies and Procedures.</p> <p>Engagement in variety of technical assistance and evaluation.</p>
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Executive Summary

The summary table below outlines program activities in the Adult Division for Supervision:

Pretrial & Investigations	2012	2013	2014	2015	2016	Change From Prior Year
Pretrial Assessment Reports Completed	175 (1 st ½ only)	524	1,946	2,457	2,668	+ 9%
Pre-sentence Reports Completed	225	238	244	174	190	+ 9%

Supervision (Caseload totals on 12/31/2016)	2012	2013	2014	2015	2016	Change From Prior Year
Total Active Supervision Caseload	2403	2507	2400	2186	1887	- 14%
Number of Individuals Sentenced to Local Prison (1170h)	79	76	85	39	58	+ 49%
Mandatory Supervision		37	49	55	36	- 35%
Post Release Community Supervision	92	101	120	151	158	+ 5%

¹ The Correctional Assessment and Intervention System (CAIS) identifies underlying reasons for criminal behavior; classifies offenders into risk level and supervision strategy groups; provides recommendations for specific supervision and communication techniques for each. The Ontario Domestic Abuse Risk Assessment (ODARA) is used to assess risk of future domestic assault, frequency, and severity of future assaults. The Static-99R is a tool used to assess the potential for sexual re-offending by male offenders.

² Effective Practices in Community Supervision (EPICS) model is designed to use a combination of monitoring, referrals, and face-to-face interactions to provide the offenders with a sufficient “dosage” of treatment interventions, and make the best possible use of time to develop a collaborative working relationship.

Division Highlights from 2016

Pretrial Services achieved the highest number of PSA-Court reports since the 2014 implementation (more than 2,600 assessments in 2016, with an additional 300 progress reports submitted). The Decision Making Framework (DMF) modifications took effect, bringing it more in line with the national trends. The average daily population (ADP) under pretrial supervision experienced a surge to just over 62 (up from 38 in 2015), with the ADP during the last quarter reaching into the seventies. Nearly 23,000 bed days were saved at the jail; a cost savings of more than two million dollars, based on \$89 per day (a savings exceeding \$2.6 million when utilizing the *Results First* updated costs of \$115 per day).

Collaborative Courts –

- Behavioral Health Court (BHC) collaboration
- Veteran's Court
- Domestic Violence Review Court

The **Investigations** Unit saw a more than 9% increase in pre-sentence and pre-plea reports from the previous year (190 up from 174).

Deputy Probation Officers (DPOs) provided **court coverage** for three felony court calendars, four days per week, weekly Behavioral Health Court, and monthly Veteran's Court. In March 2016, Domestic Violence (DV) review calendars were re-established in the two misdemeanor departments, with DPOs staffing court on Friday mornings, alternating between the two courtrooms. As the certifying body of DV Programs, our Department worked closely with providers to integrate evidence based curriculum into the statutorily mandatory program; brought training to local providers and DPOs; revived attendance and participation in, as well as hosted, Round Table discussions across the state. An additional DV officer mid-year allowed a modest reduction of moderate and high risk DV caseload sizes.

A Letter of Interest (LOI) process completed for **AB109 treatment funds**, led to Service Contracts which included service-specific outcome objectives, based on prior year data. Probation staff provide contract oversight for all AB 109 Service providers. Additional contracts include Probation Support Services (formerly WRAP) for non-AB109 clients; Community Options Court Referral for community service requirements; and BI, Inc. for electronic monitoring needs (for pretrial, as well as adult and juvenile supervision, detention alternatives). To improve service delivery Probation and the Sheriff's Department began piloting the Client Executive Summary (CES) with the 1170(h) population in the jail, a guiding document utilizing risk and need assessment to determine jail programming, re-entry planning, and community supervision case plans. The **intake** process and **case plans** also underwent revision to be more strategic.

Since the passing of 2014's **Prop 47**, nearly 1,000 cases (or more than 300 individuals) under formal supervision have been reduced or closed. The most significant impact being on administrative and lower risk/lower supervision caseloads (74%); 24% from the moderate or high caseloads, and about 2% from the highest risk or specialized caseloads. Even after resentencing, and with support of the Court, the department continues to supervise certain moderate and high risk cases when statutorily possible (generally determined by custody credit). Probation staff was actively involved in the planning of the Prop 47 Summit in January 2016 to education the public and service providers about Prop 47 relief, as well as linking individuals to a variety of record clearance resources. Since that time, record clearance clinics and outreach efforts continue to occur throughout the community, with support from all of the criminal justice partners.

Since 2011, 359 individuals have received local prison commitments per Penal Code **1170(h)**; 496 individuals have been release from the California Department of Corrections and Rehabilitation to **Post Release Community Supervision** (PRCS). At the close of 2016, there were 101 active 1170(h) cases (36 on Mandatory Supervision, the remainder serving their Straight custody sentence or the custody portion of their Split Sentence), and 158 PRCS.

Staffing

The Adult Division is comprised of 31 Deputy Probation Officer positions (DPO I/II), including several vacancies; seven supervisors (DPO IIIs); three managers; four Probation Aides (PA); and one Group Supervisor (GS) assigned to direct supervision activities, including intake and transfers (1203.9 jurisdictional transfers and Interstate Compact). Four of the DPOs, one Supervisor, and one PA are dedicated to Pretrial Services.

Supervision Staff and Positions Allocated	# of Positions
Division Director	1
Assistant Division Directors	2
Supervising Deputy Probation Officer III	7
Deputy Probation Officer I/II	31
Group Supervisor	1
Probation Aides	4
Typist Clerks (including reception)	6

Despite the overall reduction in total Probation population during the last five years (a decrease of more than 20%, from 2403 to 1887), the need for smaller caseload to officer ratios continues to grow. One great contributor to the most significant drop in total population was the passing of Prop 47 in late 2014, due to both resentencing of offenders, and fewer new cases which fall under the modified statutes being placed on formal supervision. With the decriminalization of simple drug possession crimes and use, as well as lower level property crimes – strongly correlated with substance abuse - the landscape of the supervision population has changed. In recent years we have seen a growing pretrial population, increasing number of individuals released from the California Department of Corrections and Rehabilitation to local supervision, and greater emphasis on utilizing evidence based supervision strategies and resources on the highest risk and moderate risk offenders. The remaining individuals being placed on formal supervision are committing higher level of offenses, or are of specialized populations such as sex offenders, domestic violence, severely mentally ill (the majority of which are high risk and high need). Vacancies and staff leaves, in conjunction with the sizeable lower risk, but often high need, caseload continues to present challenges in responding to court orders (particularly program placement and transportation).

The Adult Division’s highest risk and specialized caseloads account for nearly 23% of the total Adult Division caseload (a slight increase predominantly due to AB109). On the opposite end of the spectrum, just under 20% of the adult caseload is supervised administratively with minimal oversight. Nearly half of the total adult caseload (42%) is assigned to a moderate/high general supervision or Domestic Violence caseload (domestic violence accounts for

Supervision Types (AB109 and Probation)	% of Population
Specialized Supervision – Higher Risk with Violence, Severely Mentally Ill, AB109, Sex Offenders	23%
General Supervision – Moderate / High Risk Domestic Violence – Moderate / High Risk	42%
General Supervision – Low / Moderate Risk Domestic Violence – Low Risk	8%
Administrative Caseloads	19%

approximately 1/3 of the total moderate/high risk offenders), with about eight percent assigned to low supervision on a general or domestic violence caseloads. As staffing allows, we continue to reduce our highest risk and moderate risk caseload sizes, yet as we move into 2017 more of the moderate risk offenders (particularly those with limited or no history of violence and weapons) will be moved down to lower levels of supervision.

Continuous Quality Improvement and Skill Building

The Adult Division is committed to the mastery of effective supervision practices techniques, and a focus on coaching and quality assurance to improve case management of our highest risk offenders in order to maximize our impact on recidivism.

Risk Assessments / Case Planning - In early 2015, the CAIS Power Users completed a refresher training to enhance their skills and by the end of the year had created a booster training class for all Adult Division Staff. In early 2016, all Adult officers and aides were required to attend the booster training sessions. Additional Power User training is scheduled for Spring 2017. To improve service delivery Probation and the Sheriff's Department began piloting the Client Executive Summary (CES) with the 1170(h) population in the jail, a guiding document utilizing risk and need assessment to determine jail programming, re-entry planning, and community supervision case plans. The population using the CES continues to expand, with the goal of utilizing on all cases. The *intake* process and *case plans* also underwent revision to be more strategic, by updated forms and processes. All clients under the supervision of probation (formal probation, PRCS, Mandatory Supervision) go through an intake process where their risk level is assessed. Based on risk level and case type, lower level case may be placed on Administrative Supervision, or they may receive a full assessment to identify criminogenic needs and receive appropriate referrals. The case plan is a living document meant to be utilized and updated throughout supervision to facilitate positive change and accountability.

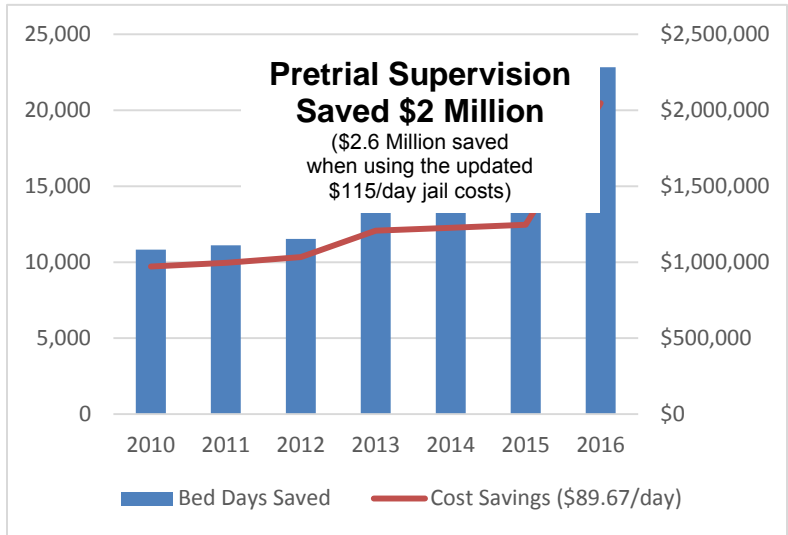
EPICS - Santa Cruz County collaborated with Sonoma and Humboldt Counties to partner with the University of Cincinnati to conduct a Training for Trainers of the EPICS model (Effective Practices in Community Supervision), in order to increase our internal capacity for training and fidelity in the most cost effective manner. These EPICS trainers provide support to all three Divisions. The first phase of the training for trainers was completed in April 2016. Thus far, the new trainers trained a dozen new staff throughout the year, and continue to participate in the certification process and coaching sessions for those staff into 2017. The plan in 2017 is to continue training supervisors to be more robust coaches for ongoing staff support.

Cognitive Behavioral Interventions - As a leader of Thinking for a Change (T4C) in the community and in the jail facilities, Adult Division staff run quarterly facilitator meetings with our community and criminal justice partners to maintain fidelity to the T4C curriculum. In 2016 the group expanded to include other cognitive behavioral interventions which may benefit the larger group of staff and providers.

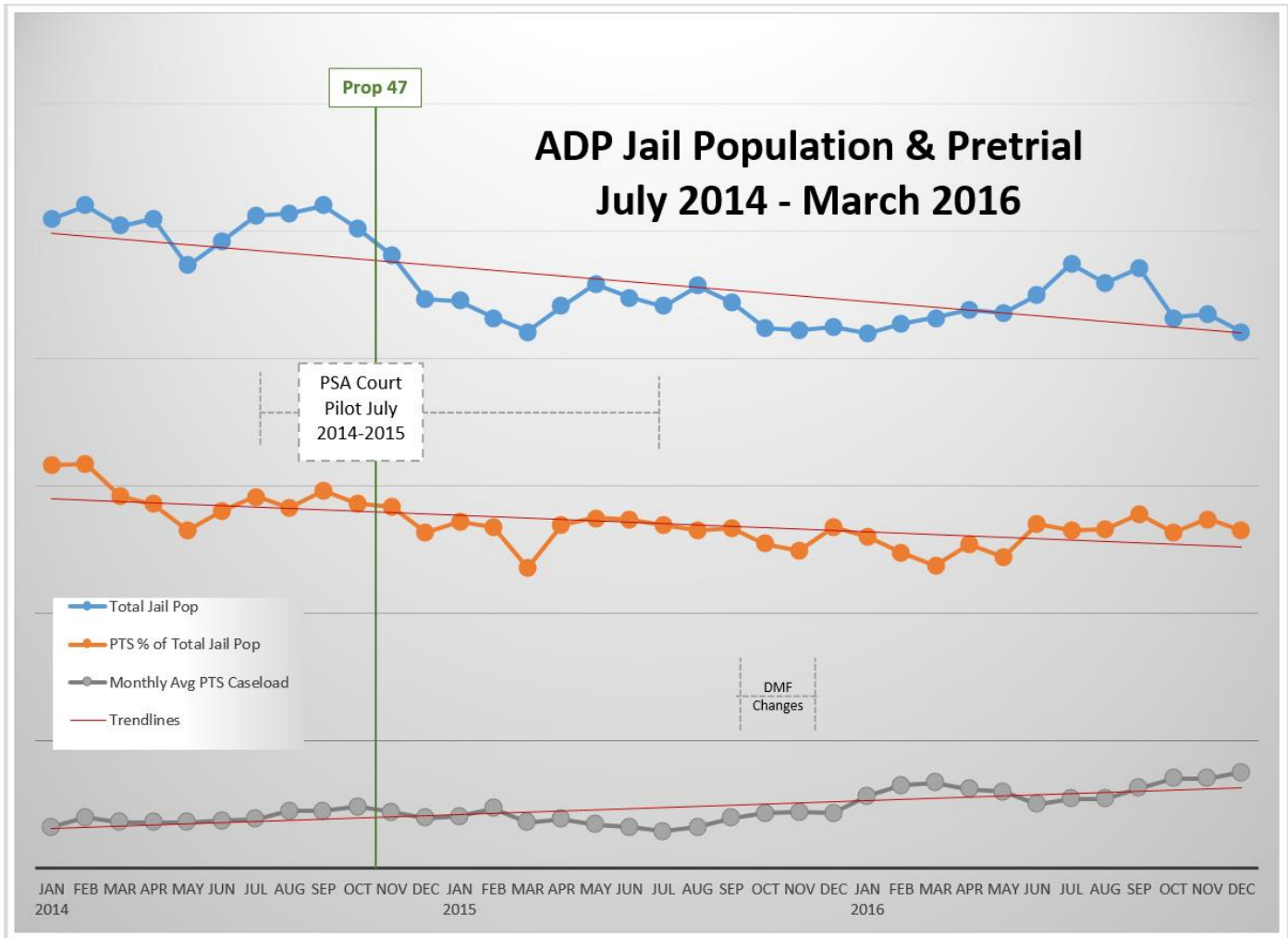
The Probation Department contracts annually with the Volunteer Center's Friends Outside Program for a number of one-on-one or small group services, including the Warrant Reduction Advocacy Project (WRAP), Cognitive Behavioral Workbook interventions to address a variety of criminogenic needs and life skills, and After Care services to non-AB109 clients.

Pretrial and Custody Alternatives

The overall trend for incarcerated individuals is a declining population, particularly the last several years, and the pretrial population in the jail has followed suit. Based on monthly statistics released from the Santa Cruz County Sheriff's Office, the pretrial detainees accounted for about 60% of the total detention facilities population in 2015, and decreased slightly to 59% in 2016 (below the state average of 63%, as reported from the Board of State and Community Corrections). Alternatively, the average daily population under pretrial supervision in the community has continued to increase over the last several years, and we anticipate that number to increase exponentially if bail reform continues on its current trajectory. Pretrial assessments provide a guide for balancing an individual's overall risk to fail to appear with risk to reoffend while in the community when making release decisions, as opposed to a money based system of posting bond based on current charges.



The Santa Cruz County Probation Department currently utilizes the Public Safety Assessment-Court (PSA-Court). Initial findings from a partial validation in 2015 indicate the tool is accurately classifying the defendants and provided recommendations for modifications to the decision making framework, which were implemented fully in 2016. The Department worked with the Dr. VanNostrand and staff throughout 2016 to prepare data for a full validation of the tool. The analysis is expected to be completed in early to mid-2017.



Outcome Measures

The following Outcome Measures, Performance Measures and Mission Critical Data were adopted in 2012 and are measured annually in order to track our program’s effectiveness in meeting agency and justice system goals³:

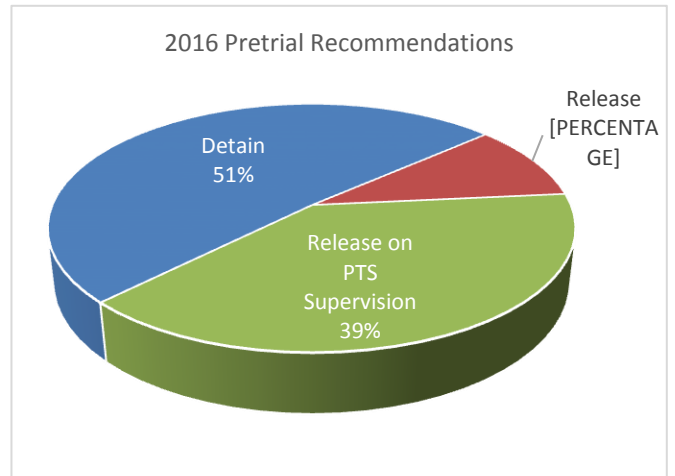
2016 Pretrial Reports and Supervision	Monthly Average	Annual Total	Bed Days Saved	Change From Prior Year
Pre-trial Reports Completed	222	2668		+ 8%
Average Monthly Caseload (ADP)*	62	355	22,832	+ 64%
Pre-arraignment releases**		64	128 - 320	- 31%
WRAP (warrants averted)***	3	38	1,520	+ 58%

*ADP During the year the Q1 = 63, Q2 = 57, Q3 = 57, Q4 = 72
 **Pre-arraignment releases typically save a minimum of two to five days of jail
 ***A study conducted by the Vera Institute of Justice in Santa Cruz County showed that, on average, probationers who were arrested on bench warrants issued for failing to maintain probation contact spent an average of 40 days in jail.

³ In 2011, the National Institute of Corrections published, “Measuring What Matters Outcome and Performance Measures for the Pretrial Services Field.” The publication recommended measures and data for pretrial service programs that would enable agencies to gauge more accurately their program’s effectiveness in meeting agency and justice system goals. The recommended outcomes measures and data elements are consistent with the mission and goals of our Department.

Recommendation Rate					
<i>The percentage of time pretrial staff follow risk assessment criteria when recommending release or detention versus making an override (including override to lower level) recommendation. The acceptable standard by Pretrial experts is considered to be between a 10-15%</i>					
Year	Total Recommendations	Conform	Override	Override %	Goal %
1 st Half 2012	175	106	69	39.4%	10-15%
2013	524	362	152	42.0%	10-15%
1 st Half 2014 (VPRAI)	649	456	192	29.6%	10-15%
2 nd Half 2014 (PSA-Court)	1297	1204	93	7.2%	10-15%
2015	2457	2166	291	11.8%	10-15%
2016	2,668	2,284	384	14.4%	10-15%

Pretrial release recommendations follow the *PSA-Court Decision Making Framework (DMF)*. The DMF guides staff on the various steps to follow in utilizing the PSA-Court to make a release recommendation based on current charge type, risk of new criminal activity, risk of failure to appear and risk of new violent criminal activity. In general, defendants who score low on their risk of failure to appear and risk of new criminal activity should be recommended for release without supervision. Moderate risk defendants should be recommended for supervised release and high risk defendants should be either detained or have a more structured supervised release such as electronic monitoring.



Appearance Rate						
<i>The percentage of supervised defendants who make all scheduled court appearances.</i>						
Supervised Pretrial	2012	2013	1 st Half 2014 (VPRAI)	2 nd Half 2014 (PSA-Court)	2015	2016
Appearance Rate	92.0%	90.3%	94.2%	91.8%	88.8%	88.2%
Goal	85%	85%	85%	85%	85%	85%

In 2016, 88.2% of the individuals released to pretrial supervision appeared for court, which is comparable to the previous year and exceeded our goal. Following a 47% increase in the number of individuals released to pretrial supervision (from 241 to 355), this is quite significant. Similar to the previous year, more than 75% of defendants released to pretrial supervision pre-arraignment in 2016 appeared for court (43 of 57). An additional seven defendants released pre-arraignment had no charges filed by the District Attorney’s Office.

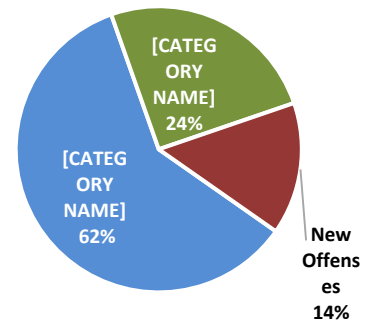
Safety Rate						
<i>The percentage of supervised defendants who were not charged with a new offense during their period of pretrial supervision.</i>						
Supervised Pretrial	2012	2013	1 st Half 2014 (VPRAI)	2 nd Half 2014 (PSA-Court)	2015	2016
Safety Rate	92.5%	90.7%	93.4%	91%	95.9%	93%
Goal		95%	95%	95%	95%	95%

In 2016, 93% of defendants released to pretrial supervision completed their period of pretrial supervision with no new offenses. Of the 25 individuals who were rearrested for a new offense, only five of them (or 1.4% of the total supervised pretrial population) were arrested for new “violent” offenses. After modifications to the Decision making framework in late 2015 from a more conservative to a moderate approach, and a growing population released to pretrial supervision, a slight decline in safety rate was to be expected (down 3% from 2015 to 2016). While we have made improvements, the low re-offense rate and very low new violent criminal activity indicates that we should continue to work with our criminal justice partners explore how we can take a greater risk for release to balance goals of improving long-term outcomes with public safety.

Success Rate							
<i>The % of released defendants who were not revoked for technical violations due to condition violations, and who appeared for all scheduled court appearances, and remained arrest free during pretrial supervision.</i>							
Supervised Pretrial	2011	2012	2013	1 st Half 2014 (VPRAI)	2 nd Half 2014 (PSA-Court)	2015	2016
Success Rate	76.1%	65.7%	63.6%	51.2%	58.2%	55.6%	50.1%
Goal			70%	70%	70%	70%	70%

The rate of defendants released to pretrial supervision during 2016 who were not revoked, and appeared for all scheduled court appearances, and remained arrest free was just over 50% (178 of 355). While the overall success rate dropped nearly 10%, the actual number under supervision rose more than 47%. When examining “success” rates, you need to look at defendants who “successfully” completed pretrial supervision by appearing at all their court hearing as well as those defendants who were held “accountable” for not complying with the term of pretrial release and were returned to custody pending disposition. Many of the technical violations are substance abuse related, as well as failure to report as directed. We did expect a greater number of technical violations as the Decision making framework became less conservative. In 2017 we will be pursuing a violating response matrix in order to prevent the unnecessary re-incarceration of those individuals who are “unsuccessful” based on technical violation only, yet do not commit a new offense pending adjudication (as previously indicated new offense rates are very low).

Unsuccessful Completions By Type



Concurrence (Effectiveness) Rate				
<i>The ratio of court released and detained defendants compared to pretrial's submitted recommendations for release and detention.</i>				
2016	Released	Detained	Recommendation Followed	Change From Prior Year
Recommended for Release	342	368	48%	+ 2.4%
Recommended for Detention	168	710	81%	- 4%
Recommendation Followed (Total)			66 %	- 2%
GOAL			75%	

In 2016, concurrence rates for release recommendations showed a slight increase (2.4%) from the previous year, while the total concurrence rate (66%) decreased nearly 2%. As the Decision making matrix became more moderate, the Court as a whole continues to take a more conservative release decisions, as they are more likely to follow a recommendation for detention (81% of the time) than a recommendation for release.

AB109: Public Safety Realignment

The Adult Division is responsible for the implementation of the 2011 Public Safety Realignment Act (AB 109), which redistributed the responsibility for certain offenders from the State to counties.

Locally Sentenced (1170h):⁴

In collaboration with the Sheriff's Office, Probation has dedicated officers to conduct risk and needs assessments on 1170(h) inmates, and assist with referrals / case management during the incarceration, reentry, and community supervision stages of their sentence. As of December 31, 2016, there were 101 active 1170(h) cases (with 36 of those in the community under Mandatory Supervision). In general, local prison sentences have declined since the passing of Prop 47, yet 2016 did see an increase from the previous year. Approximately two-thirds were either serving a straight sentence or the custody portion of their split sentence, yet some of those individuals may have also been in the community being supervised by the Sheriff's Custody Alternatives Program (CAP). Substantial modifications in jail programming and the Sheriff's CAP have had significant impacts on actual time served in the jail, as there is a growing emphasis on balancing accountability with programming and re-entry back into the community.

Individuals Receiving Local Prison 1170(h) Sentences October 2011 – December 2016: 362	
Total "Straight" Sentences since 2011	49%
<i>2016 "Straight" Sentences</i>	<i>38%</i>
Total "Split" Sentences since 2011	51%
<i>2016 "Split" Sentences</i>	<i>62%</i>

⁴ **1170(h):** *Non-serious, non-violent, non-sex offense felons without current or prior serious felonies now serve prison commitments in local jail.⁴ The "straight" sentences are custody only, and "split" sentences have a community supervision component following jail time called Mandatory Supervision (which is similar to formal probation supervision).*

Post Release Community Supervision (PRCS):⁵

As of December 31, 2016, there were 158 active PRCS offenders on AB109 caseloads, with an additional 13 who were deported or released to Immigration and

Post Release Community Supervision (PRCS) October 2011 – December 2015	
Total Individuals Released to Santa Cruz	522
Total completions / discharges	332

Customs Enforcement (ICE). The majority of new PRCS clients are returning from state prison after serving a commitment for drug and property related crimes, and have a lengthy history of drug use. We received approximately four individuals who were released from CDCR after serving sentences in excess of 10 years (one after serving a 20 year sentence).

Based on new cases reported to the Probation Department since 2011, approximately 240 AB109 offenders (1170(h) = 106 and PRCS = 134) have been convicted of a new felony or misdemeanor offense in this county. The majority of new crimes continue to be drug and property related, however, there is a small percentage of persons or weapons offenses.

AB109 Service Provider Network:

During FY15/16, the Probation Department released a request for letters of interest/request for qualifications for providing treatment and intervention services to the AB109 population, with new contracts to begin July 1, 2016. Service areas include: programs addressing criminal thinking, behavior and identity; substance use disorder treatment and recovery maintenance; workforce and job placement services; educational programming; mental health care; family involvement; housing support; reentry planning and community support; and community education and engagement. A total of thirteen organizations were selected by a community review panel.

During the first nine months of FY16/17, AB109 providers delivered a total of 23,428 hours of service (down just slightly from the previous year) and 6,410 bed nights of housing (down nearly 42%) to 2,120 individuals (some duplicated during that period), including those sentenced and supervised under AB109 as well as others who participated in services while in custody or who were at risk of becoming AB109 offenders.

AB109 services continue to make use of support from the Results First initiative and technical assistance from George Mason University to implement research-based practices to fidelity in order to have the greatest impact on recidivism. In addition, during FY15/16 the Community Corrections Partnership (CCP) approved a competitive contract⁶ for external evaluation services. Feedback and recommendations have been provided and began implementation during the evaluation process, which is set to be completed in 2017.

The Adult Division has facilitated on-going work groups and meetings with staff from Corrections and community-based agencies to better coordinate in-custody assessment, services, and linkage to services in the community for more successful reentry following release from jail and prison. This cross-jurisdictional approach is intended to reduce service gaps and duplication,

⁵ **PRCS:** *Realignment transferred to counties the responsibility for supervising felons (formerly called parolees) upon their release from state prison for non-serious, non-violent, non-sex offenses. Re-entry planning begins while the offender is incarcerated in prison and aids in the process of transitioning home.*

⁶ *In early 2016, the contract was awarded to Resource Development Associates, an Oakland-based firm that has been involved in the evaluation of AB109 implementation and outcomes for multiple Bay Area counties. Activities include the development of an evaluation plan, as assessment of current data collection and analysis capacity, and a quantitative assessment of outcomes based on the collective impact of all elements of local AB109 implementation.*

and will improve system responsiveness and public safety outcomes, both for AB109 and for individuals throughout the local criminal justice system.

Grants and Technical Assistance/Research Projects

The Division has secured technical assistance, program and research grants to assist in implementing criminal justice reform and to assist in maximizing resources and benefits from justice and public dollars.

Justice Reinvestment Initiative (JRI): For the last five years, the County has received funding and technical assistance from the Bureau of Justice Assistance to implement the JRI model, including in-depth, system-wide data analysis, development of priorities for system improvement, and funding to initiate and assess cost-effective, sustainable practices to produce better public safety outcomes. On September 15, 2015, the Probation Department was notified that our County was selected to receive \$349,058 in continuation funding through September 30, 2018. This funding continues to support 0.75 FTE of a full time Pretrial Probation Officer; 0.10 FTE of a full time Administrative Aide; and officer safety equipment. In addition, JRI funding will partially support an automated telephone court notification system (implemented September 2015), an expansion of the Volunteer Center's WRAP program to focus on offenders at high risk for failure to appear in court, and an external evaluator to update the local system-wide data analysis, as well as to assess effectiveness and cost-benefit of JRI strategies.

Pew-MacArthur Results First Initiative: Santa Cruz County continued to work with staff from the Pew-MacArthur Results First initiative during FY15, including implementing a new and most sophisticated analytical tool for assessing the economic impact of selected criminal justice interventions. Results First analyses were embedded in the selection of new AB109 services and providers, establishing a priority on implementing research-based programs to fidelity and interventions with a proven benefit/cost ratio. The Sheriff's Department has also used Results First to guide in-custody service planning, as well as updated average costs per day for inmates. In addition, the Probation Department has begun planning to extend the Results First model to the Juvenile Division, and Adult Division staff are providing guidance for planning and implementing this initiative.

MIOCR: In partnership with the Sheriff's office and Health Services Agency (HSA), Santa Cruz County received \$950,000 from the Board of State and Community Corrections (BSCC) Mentally Ill Offender Crime Reduction Act (MIOCR). The funds are dispersed over three years to expand the Santa Cruz Counties Mentally Ill Offender Continuum of Care model already established and require matching funds and services by multiple community stakeholders. Probation specifically received \$100,000 to fund one DPO FTE to expand Mental Health Supervision, and a small pool of funds (\$8,500) to expand electronic monitoring of mentally ill defendants at the pretrial stage. In December 2015 the MIOCR Pretrial Electronic monitoring pilot project began with a limited number of cases in collaboration CIT. The referral process for potential cases comes directly from either CIT or Pretrial staff. These cases are jointly reviewed for suitability in the pilot project. Once approved, a recommendation is made to the Court for release. If authorized by the court, the defendant is provided with County Mental health services through CIT and housed at a mental health residential treatment facility, or other suitable placement, rather than remaining in the jail. The defendant is placed on an electronic monitor and is supervised by pretrial services staff while pending Court. During 2016, the MIOCR/EMP program served 12 cases, with a jail bed day savings of 453 days (a cost savings of more than \$52,000 based on \$115 per day jail costs).

Proud Parenting Program (PPP): Santa Cruz County Probation Department, in partnership with Encompass Community Services' (Encompass) PAPÁS Supporting Fatherhood Involvement and Co-Parenting program (PAPÁS) completed a second year of a three year grant, \$119,285 per year from the BSCC to address recidivism and the intergenerational cycle of criminal justice involvement by working with young Latino fathers in the criminal justice and/or child-welfare systems. Through evidence-based parent education/support and Cognitive Behavioral Treatment groups, the Santa Cruz County Proud Parenting Program (SCCPPP) works to tap into this population's highest stated intrinsic motivation to change - that of positively affecting the future of their children. During each of the three years, a majority of the PPP funds (84% – 87%) are for contracted services through Encompass to support the delivery of direct services to the target population and expand existing resources; 0.5 FTE of the Probation Adult Division Director to oversee grant activities, as well as 5%-10% for an outside evaluation of the project. The Proud Parenting award also led to PAPÁS receiving a significantly larger federal grant to expand services to parents across multiple counties, and extends beyond the life of this BSCC grant.

Future Goals

As the Department strives to use data, evaluation, and research to make strategic funding and programming decisions, our Division looks towards the following goals for 2017:

Enhance pretrial services by establishing administrative sanctions for technical violations to avoid unnecessary incarceration; complete the full validation study of the Public Safety Assessment- Court (PSA-Court) tool; pilot the use of the Ontario Domestic Assault Risk Assessment (ODARA) in conjunction with the PSA-Court to improve victim safety as early as possible.

Expand the use of risk based / assessment based sentencing through increased presentence investigation reports; expand the use of the ODARA and trauma history into investigations. Apply evidence-based supervision strategies when making referrals, supporting behavior change, and accountability. This includes increasing the early integration of the Client Executive Summary (CES) to create a smoother transition along the continuum of services. We are also committed to exploring paths of sustainability for expiring grants.