SB 10 General Overview, Updated November 8, 2018

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

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

Release and Detention Process Summary

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

Components of the Legislation

1. Eliminates money bail effective October 1, 2019.

2. Components of the Risk-Based System:

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

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

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

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

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

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

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

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

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

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

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

3. Standards for Release and Detention

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

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

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

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

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

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

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

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

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

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

5. Structure

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

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

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

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

6. Funding

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

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

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

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

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

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

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