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Councilmember District 4

CONSENT CALENDAR
April 25th, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison, Mayor Jesse Arreguin, and Councilmembers Ben Bartlett and Cheryl Davila

Subject: Support of AB 42 and SB 10, the California Money Bail Reform Act

RECOMMENDATION

Adopt a Resolution in support of AB 42 and SB 10, the California Money Bail Reform Act, authored by Assemblyman Rob Bonta and Senator Robert Hertzberg respectively. Send a copy of the resolution to Governor Jerry Brown, State Senators Kevin de Leon and Nancy Skinner, and Assemblymember Tony Thurmond.

FINANCIAL IMPLICATIONS

None

BACKGROUND

These two bills are identical legislative proposals to shift California away from a system where thousands of people are detained before trial simply because they cannot afford to post bail. The bills would increase the use of evidence-based practices to determine whether a person who is charged with a crime should be detained in jail when awaiting their trial. These bills would also increase pretrial services to ensure that all court appearances are made.

The bills reflect a growing consensus among policymakers, advocates, and affected communities against the present system of money bail. Under the present system, arrestees can post bail based on a predetermined bail schedule or wait for a judge to set bail (based on this schedule) at an arraignment hearing several days after arrest or even later in the judicial proceedings. Those who cannot afford bail can pay a for-profit bail bond company a nonrefundable 10 percent fee. This fee is nonrefundable even if one is later found innocent or if the case is dismissed.

A person who cannot afford even that 10 percent fee (which may be a hefty sum in itself) may remain in jail for weeks, months, or sometimes years while their case moves forward. The ACLU reports that the median bail amount in California is \$50,000. Those arrested may plead guilty to offenses they didn't commit simply because they need to be released.

The ACLU reports that African American and Latino people are assigned higher bail amounts than white people. Unable to post bail, they frequently suffer loss of job, homes, and custody of their children. They are also at higher risk of being convicted, pleading guilty, and receiving harsh sentences, because assisting their attorney in

preparing a defense is harder behind bars. In short, the current system aggravates the racial disparities that already exist in the criminal justice system.

An estimated 63 percent of people in California's jails are awaiting trial or sentencing.

ENVIRONMENTAL SUSTAINABILITY

No adverse affects to the environment.

Attachments:

1. Resolution
2. Text of SB10

RESOLUTION NO. ##,###-N.S.

SUPPORT AB 42 AND SB 10, THE CALIFORNIA MONEY BAIL REFORM ACT

WHEREAS, Thousands of Californians stay in jails before their day in court because they can't afford to post bail. Many end up spending months or years in jails as their cases move forward, some even pleading guilty for a crime they have not committed. The consequences of staying in jail before trial could range from losing one's job, one's car, one's home, or losing child custody.

WHEREAS, 63% of people in jail in California, an estimated 46,000 people, are in jail awaiting trial or sentencing because they can't afford to post bail.

WHEREAS, The high cost of bail in California puts a disproportionate financial burden on low-income people and people of color and has become a high financial cost to California taxpayers.

WHEREAS, Most Californians cannot afford to post bail and so must either stay in jail or pay substantial nonrefundable fees to a bail bond company - A fee that is non-refundable even if they are proven innocent of a crime, found wrongfully arrested, or if the case is dismissed.

WHEREAS, under the California Bail Reform Act, judges will have additional tools to help them determine who can return home and under what conditions, and only those who are determined to pose a threat to the public or unlikely to appear at their pre-designated court date will be detained in jail before trial.

WHEREAS, Research shows that bail bond amounts for Black men are 35 percent higher than that of white men, bail bond amounts for Latino men are 19 percent higher than white men, Black people ages 18 through 29 will receive higher bail amounts than any other group, and Black and Latino people are twice as likely than white people to be detained before trial.

WHEREAS, Those detained before trial bail are at higher risk of being convicted because assisting your attorney in preparing a defense is harder behind bars and, thus, they are more likely to plead guilty and receive harsher sentences.

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley calls upon the Legislature and Governor of the State of California to enact AB 42 and SB 10, the California Money Bail Reform Act, to increase the use of evidence-based practices to determine if someone poses a threat to the general public before trial as well as the likelihood that they will return to court if released, and using this as a basis on whether someone should be detained before trial. , and prioritize pretrial services to ensure that those who are arrested make all court appearances.

AMENDED IN SENATE MARCH 27, 2017

AMENDED IN SENATE JANUARY 17, 2017

SENATE BILL

No. 10

Introduced by Senators Hertzberg, Allen, Anderson, Atkins, Beall, Bradford, Lara, Mitchell, Monning, Wieckowski, and Wiener (Principal coauthors: Assembly Members Bonta, Bloom, Chiu, Jones-Sawyer, Quirk, and Mark Stone)

December 5, 2016

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

legislative counsel's digest

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

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

authorize the defendant's release on his or her own recognizance. Existing law provides that a defendant being held for a misdemeanor offense is entitled to be released on his or her own recognizance, unless the court makes a finding on the record that an own recognizance release would compromise public safety or would not reasonably ensure the appearance of the defendant as required.

~~This bill would 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.~~

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

This bill would implement a revised pretrial release procedure. The bill would require, except when a person is arrested for certain felonies, that a pretrial services agency conduct a pretrial risk assessment on an arrested person and prepare a pretrial services report that includes the results of the pretrial risk assessment and recommendations on conditions of release for the person immediately upon booking. The bill would require the pretrial services agency to transmit the report to a magistrate, judge, or court commissioner and the magistrate, judge, or court commissioner, within an unspecified number of hours, to issue an oral or written order to release the person, with or without release conditions, subject to the person signing a specified release agreement. The bill would require, if a person is in custody at the time of his or her arraignment, the judge or magistrate to consider the pretrial services report and any relevant information provided by the prosecuting attorney or the defendant and to order the pretrial release of the person, with or without conditions, subject to the person signing a specified release agreement. If the judge or magistrate determines that pretrial release, with or without conditions, will not reasonably assure the appearance of the person in court as required, the bill would require the judge or magistrate to set monetary bail at the least restrictive level necessary to assure the appearance of the defendant in court as required. The bill would authorize, if the judge or magistrate has set monetary bail, the person to execute an unsecured appearance bond,

execute a secured appearance bond, or deposit a percentage of the sum mentioned in the order setting monetary bail.

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

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

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

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 **SECTION 1.** The Legislature finds and declares all of the
2 following:
3 (a) Modernization of the pretrial system is urgently needed in
4 California, where thousands of individuals held in county jails
5 across the state have not been convicted of a crime and are detained
6 while awaiting trial simply because they cannot afford to post
7 money bail or pay a commercial bail bond company. In 2015, 63
8 percent of people in California jails were either awaiting trial or
9 sentencing. As compared with the rest of the country, California
10 has relied on pretrial detention at much higher rates than other
11 states.
12 (b) California’s existing pretrial detention practices allow a
13 person’s wealth rather than the person’s likelihood of success on
14 pretrial release to determine whether the person will remain in jail
15 before the person’s case is resolved. Detaining people simply due
16 to an inability to afford money bail violates the American principles
17 of equal protection and fundamental fairness. Nationwide, the
18 majority of people who are unable to meet money bail fall within
19 the poorest third of society.
20 (c) The consequences of pretrial detention — which include a
21 greater likelihood of innocent people pleading guilty to a crime,
22 longer sentences upon conviction, loss of employment, income,
23 and housing, and traumatic family disruption — disproportionately
24 affect people of color and low-income people.
25 (d) The commercial money bail system, which requires people
26 to pay nonrefundable deposits to private companies in order to
27 secure release from jail, often leaves people in debt and drives
28 them and their families further into poverty. The commercial
29 money bail system does not improve rates of appearance in court
30 or enhance public safety.
31 (e) California should follow the lead of the federal government
32 and jurisdictions across the country that have stopped making
33 wealth-based decisions on pretrial detention and instead have

1 shifted to a system that evaluates whether an individual can be
 2 safely returned to the community as well as make required court
 3 appearances, and, if so, under what conditions.

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

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

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

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

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

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

30 SEC. 3. Section 1270 of the Penal Code is amended to read:

31 1270. (a) A person who has been arrested for, or charged with,
 32 an offense other than a capital offense may be released on his or
 33 her own recognizance by a court or magistrate who could release
 34 a defendant from custody upon the defendant giving monetary
 35 bail, including a defendant arrested upon an out-of-county warrant.
 36 A defendant who is in custody and is arraigned on a complaint
 37 alleging an offense which is a misdemeanor, and a defendant who
 38 appears before a court or magistrate upon an out-of-county warrant
 39 arising out of a case involving only misdemeanors, shall be entitled
 40 to an own recognizance release unless the court makes a finding

1 ~~on the record that there is no condition or combination of~~
 2 ~~conditions that would reasonably ensure public safety and the~~
 3 ~~appearance of the defendant as required, and that, in accordance~~
 4 ~~with Section 1275, an own recognizance release will compromise~~
 5 ~~public safety or will not reasonably ensure the appearance of the~~
 6 ~~defendant as required. Public safety shall be the primary~~
 7 ~~consideration. If the court makes one of those findings, the court~~
 8 ~~shall then set monetary bail and specify the conditions, if any,~~
 9 ~~whereunder the defendant shall be released.~~

10 ~~(b) Article 9 (commencing with Section 1318) shall apply to~~
 11 ~~any person who is released pursuant to this section.~~

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

13 ~~815a. At the time of issuing a warrant of arrest, the magistrate~~
 14 ~~shall fix the amount of bail which in his judgment in accordance~~
 15 ~~with the provisions of section 1275 will be reasonable and~~
 16 ~~sufficient for the appearance of the defendant following his arrest,~~
 17 ~~if the offense is bailable, and said magistrate shall endorse upon~~
 18 ~~said warrant a statement signed by him, with the name of his office,~~
 19 ~~dated at the county, city or town where it is made to the following~~
 20 ~~effect "The defendant is to be admitted to bail in the sum of~~
 21 ~~dollars" (stating the amount).~~

22 *SEC. 4. Section 825 of the Penal Code is amended to read:*

23 **825. (a) (1) Except as provided in paragraph (2), the defendant**
 24 **shall in all cases be taken before the magistrate without unnecessary**
 25 **delay, and, in any event, within 48 hours after his or her arrest,**
 26 **excluding Sundays and holidays.**

27 **(2) When the 48 hours prescribed by paragraph (1) expire at a**
 28 **time when the court in which the magistrate is sitting is not in**
 29 **session, that time shall be extended to include the duration of the**
 30 **next court session on the judicial day immediately following. If**
 31 **the 48-hour period expires at a time when the court in which the**
 32 **magistrate is sitting is in session, the arraignment may take place**
 33 **at any time during that session. However, when the defendant's**
 34 **arrest occurs on a Wednesday after the conclusion of the day's**
 35 **court session, or if the arrest occurs at any time on a Wednesday**
 36 **and if the Wednesday is not a court holiday, the defendant shall**
 37 **be taken before the magistrate not later than the following Friday,**
 38 **if the Friday is not a court holiday. If the Friday is a court holiday,**
 39 **the defendant shall be taken before the magistrate no later than**
 40 **the Thursday immediately following the Wednesday arrest.**

1 (b) After the arrest, any attorney at law entitled to practice in
 2 the courts of record of California, may, at the request of the
 3 ~~prisoner-detainee~~ or any relative of the ~~prisoner,~~*detainee*, visit the
 4 ~~prisoner-~~*detainee*. Any officer having charge of the ~~prisoner-~~
 5 *detainee* who willfully refuses or neglects to allow that attorney
 6 to visit a ~~prisoner-~~*detainee* is guilty of a misdemeanor. Any officer
 7 having a ~~prisoner-~~*detainee* in charge, who refuses to allow the
 8 attorney to visit the ~~prisoner-~~*detainee* when proper application is
 9 made, shall forfeit and pay to the party aggrieved the sum of five
 10 hundred dollars (\$500), to be recovered by action in any court of
 11 competent jurisdiction.

12 *SEC. 5. Section 1269 of the Penal Code is amended to read:*

13 **1269.** The taking of *monetary* bail consists in the acceptance,
 14 by a competent court or magistrate, of the undertaking of sufficient
 15 *monetary* bail for the appearance of the defendant, according to
 16 the terms of the undertaking, or that the bail will pay to the people
 17 of this state a specified sum. Upon filing, the clerk shall enter in
 18 the register of actions the date and amounts of ~~such bond and the~~
 19 *bond, the defendant's name, and, if applicable, the name or names*
 20 *of the surety or sureties thereon. In the event of the loss or*
 21 *destruction of such bond, such entries so made shall be prima facie*
 22 *evidence of the due execution of such bond as required by law.*

23 Whenever any bail bond has been deposited in any criminal
 24 action or proceeding in a municipal or superior court or in any
 25 proceeding in habeas corpus in a superior court, and it is made to
 26 appear to the satisfaction of the court by affidavit or by testimony
 27 in open court that more than three years have elapsed since the
 28 exoneration or release of said bail, the court must direct that such
 29 bond be destroyed.

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

31 **1269a.** Except as otherwise provided by law, ~~no~~*a* defendant
 32 charged in a warrant of arrest with any public offense shall *not* be
 33 discharged from custody upon *monetary* bail except upon a written
 34 order of a competent court or magistrate admitting the defendant
 35 to bail in the amount ~~specified in the indorsement referred to in~~
 36 ~~Section 815a,~~*determined pursuant to subdivision (c) of Section*
 37 *1275a and where an undertaking is furnished, upon a written order*
 38 *of such*~~the~~ court or magistrate approving the undertaking. All ~~such~~
 39 ~~those orders must~~*shall* be signed by ~~such~~*the* court or magistrate
 40 and delivered to the officer having custody of the defendant before

1 the defendant is released. Any officer releasing any defendant upon
2 bail otherwise than as herein provided shall be guilty of a
3 misdemeanor.

4 *SEC. 7. Section 1269b of the Penal Code is repealed.*

5 ~~1269b. (a) The officer in charge of a jail in which an arrested~~
6 ~~person is held in custody, an officer of a sheriff's department or~~
7 ~~police department of a city who is in charge of a jail or is employed~~
8 ~~at a fixed police or sheriff's facility and is acting under an~~
9 ~~agreement with the agency that keeps the jail in which an arrested~~
10 ~~person is held in custody, an employee of a sheriff's department~~
11 ~~or police department of a city who is assigned by the department~~
12 ~~to collect bail, the clerk of the superior court of the county in which~~
13 ~~the offense was alleged to have been committed, and the clerk of~~
14 ~~the superior court in which the case against the defendant is~~
15 ~~pending may approve and accept bail in the amount fixed by the~~
16 ~~warrant of arrest, schedule of bail, or order admitting to bail in~~
17 ~~cash or surety bond executed by a certified, admitted surety insurer~~
18 ~~as provided in the Insurance Code, to issue and sign an order for~~
19 ~~the release of the arrested person, and to set a time and place for~~
20 ~~the appearance of the arrested person before the appropriate court~~
21 ~~and give notice thereof.~~

22 ~~(b) If a defendant has appeared before a judge of the court on~~
23 ~~the charge contained in the complaint, indictment, or information,~~
24 ~~the bail shall be in the amount fixed by the judge at the time of the~~
25 ~~appearance. If that appearance has not been made, the bail shall~~
26 ~~be in the amount fixed in the warrant of arrest or, if no warrant of~~
27 ~~arrest has been issued, the amount of bail shall be pursuant to the~~
28 ~~uniform countywide schedule of bail for the county in which the~~
29 ~~defendant is required to appear, previously fixed and approved as~~
30 ~~provided in subdivisions (c) and (d).~~

31 ~~(c) It is the duty of the superior court judges in each county to~~
32 ~~prepare, adopt, and annually revise a uniform countywide schedule~~
33 ~~of bail for all bailable felony offenses and for all misdemeanor~~
34 ~~and infraction offenses except Vehicle Code infractions. The~~
35 ~~penalty schedule for infraction violations of the Vehicle Code shall~~
36 ~~be established by the Judicial Council in accordance with Section~~
37 ~~40310 of the Vehicle Code.~~

38 ~~(d) A court may, by local rule, prescribe the procedure by which~~
39 ~~the uniform countywide schedule of bail is prepared, adopted, and~~
40 ~~annually revised by the judges. If a court does not adopt a local~~

1 ~~rule, the uniform countywide schedule of bail shall be prepared,~~
2 ~~adopted, and annually revised by a majority of the judges.~~

3 ~~(e) In adopting a uniform countywide schedule of bail for all~~
4 ~~bailable felony offenses the judges shall consider the seriousness~~
5 ~~of the offense charged. In considering the seriousness of the offense~~
6 ~~charged the judges shall assign an additional amount of required~~
7 ~~bail for each aggravating or enhancing factor chargeable in the~~
8 ~~complaint, including, but not limited to, additional bail for charges~~
9 ~~alleging facts that would bring a person within any of the following~~
10 ~~sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 11~~
11 ~~667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12~~
12 ~~12022.53, 12022.6, 12022.7, 12022.8, or 12022.9 of this code, or~~
13 ~~Section 11356.5, 11370.2, or 11370.4 of the Health and Safety~~
14 ~~Code.~~

15 ~~In considering offenses in which a violation of Chapter 6~~
16 ~~(commencing with Section 11350) of Division 10 of the Health~~
17 ~~and Safety Code is alleged, the judge shall assign an additional~~
18 ~~amount of required bail for offenses involving large quantities of~~
19 ~~controlled substances.~~

20 ~~(f) The countywide bail schedule shall contain a list of the~~
21 ~~offenses and the amounts of bail applicable for each as the judges~~
22 ~~determine to be appropriate. If the schedule does not list all~~
23 ~~offenses specifically, it shall contain a general clause for designated~~
24 ~~amounts of bail as the judges of the county determine to be~~
25 ~~appropriate for all the offenses not specifically listed in the~~
26 ~~schedule. A copy of the countywide bail schedule shall be sent to~~
27 ~~the officer in charge of the county jail, to the officer in charge of~~
28 ~~each city jail within the county, to each superior court judge and~~
29 ~~commissioner in the county, and to the Judicial Council.~~

30 ~~(g) Upon posting bail, the defendant or arrested person shall be~~
31 ~~discharged from custody as to the offense on which the bail is~~
32 ~~posted.~~

33 ~~All money and surety bonds so deposited with an officer~~
34 ~~authorized to receive bail shall be transmitted immediately to the~~
35 ~~judge or clerk of the court by which the order was made or warrant~~
36 ~~issued or bail schedule fixed. If, in the case of felonies, an~~
37 ~~indictment is filed, the judge or clerk of the court shall transmit~~
38 ~~all of the money and surety bonds to the clerk of the court.~~

1 ~~(h) If a defendant or arrested person so released fails to appear~~
 2 at the time and in the court so ordered upon his or her release from
 3 custody, Sections 1305 and 1306 apply.

4 SEC. 8. Section 1269b is added to the Penal Code, to read:

5 1269b. (a) The officer in charge of a jail in which an arrested
 6 person is held in custody, an officer of a sheriff's department or
 7 police department of a city who is in charge of a jail or is employed
 8 at a fixed police or sheriff's facility and is acting under an
 9 agreement with the agency that keeps the jail in which an arrested
 10 person is held in custody, an employee of a sheriff's department
 11 or police department of a city who is assigned by the department
 12 to collect bail, the clerk of the superior court of the county in which
 13 the offense was alleged to have been committed, a pretrial services
 14 agent, and the clerk of the superior court in which the case against
 15 the defendant is pending, may approve and accept an order
 16 authorizing pretrial release or admitting to bail, to issue and sign
 17 an order for the release of the arrested person, and to set a time
 18 and place for the appearance of the arrested person before the
 19 appropriate court and give notice thereof.

20 (b) A person who is arrested and booked into jail for a violent
 21 felony, as defined in subdivision (c) of Section 667.5, shall not be
 22 considered for release until the person appears before a judge or
 23 a magistrate for a hearing in accordance with Section 1275a or
 24 1275b. The pretrial services agency shall not conduct a risk
 25 assessment or prepare a pretrial services report for any person
 26 who is arrested and booked into jail for a violent felony except in
 27 accordance with subdivision (f) of Section 1275a.

28 (c) The pretrial services agency shall, within _____ hours of
 29 arrest, conduct a risk assessment on a person arrested and booked
 30 into jail for one of the following offenses and prepare a pretrial
 31 services report with recommendations for conditions of release,
 32 however, the person shall not be considered for release until the
 33 person appears before a judge or magistrate for a hearing in
 34 accordance with Section 1275a or 1275b:

35 (1) A serious felony, as defined in subdivision (c) of Section
 36 1192.7, except a violation of subdivision (a) of Section 460.

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

39 (3) A violation of paragraph (1) of subdivision (e) of Section
 40 243.

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

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

6 (d) Except as provided in subdivisions (b) and (c), if a person
7 is arrested and booked into jail, the pretrial services agency shall,
8 immediately upon booking and, except where physically impossible,
9 no later than _____ hours after booking, conduct a pretrial risk
10 assessment on the person and prepare a pretrial services report
11 with recommendations for conditions of release.

12 (e) If a person who is arrested and booked for a misdemeanor
13 is not first released pursuant to Section 853.6, and except as
14 otherwise provided in subdivisions (c) and (f), the person shall be
15 released by the pretrial services agency subject to signing a release
16 agreement under Section 1318 without further conditions. A person
17 who is arrested and booked for a misdemeanor and who is
18 currently on pretrial release with or without conditions shall not
19 be eligible for release under this subdivision and shall instead be
20 considered for release pursuant to subdivision (f).

21 (f) (1) Except as otherwise provided in subdivisions (b), (c),
22 and (e), upon completion of the pretrial risk assessment and
23 preparation of a pretrial services report with recommendations
24 for conditions of release, the pretrial services agency shall
25 immediately transmit the pretrial services report and
26 recommendations on conditions of release to a magistrate, judge,
27 or court commissioner. The magistrate, judge, or court
28 commissioner shall, no later than _____ hours after receipt of the
29 pretrial services agency's pretrial risk assessment and pretrial
30 services report with recommendations for conditions of release,
31 issue an oral or written order for release subject to a release
32 agreement under Section 1318 without further conditions or subject
33 to a condition or conditions in accordance with Section 1275a.

34 (2) If the pretrial services report prepared by the pretrial
35 services agency is not available, the magistrate, judge, or court
36 commissioner shall release the person subject to a release
37 agreement under Section 1318 without further conditions or subject
38 to a condition or conditions in accordance with Section 1275a.
39 The fact that the court has not received the report required under
40 this section shall not preclude release pursuant to this paragraph.

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

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

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

12 (j) The judicial duties to be performed under this section are
 13 “subordinate judicial duties” within the meaning of Section 22 of
 14 Article VI of the California Constitution and may be performed
 15 by appointed officers such as court commissioners.

16 SEC. 9. Section 1269c of the Penal Code is amended to read:

17 **1269c.** If a defendant is arrested without a warrant for a bailable
 18 felony offense or for the misdemeanor offense of violating a
 19 domestic violence restraining order, and a peace officer has
 20 reasonable cause to believe that the amount of bail set forth in the
 21 schedule of bail for that offense release subject to a release
 22 agreement under Section 1318 without further conditions is
 23 insufficient to ensure the defendant’s appearance or to ensure the
 24 protection of a victim, or family member of a victim, of domestic
 25 violence, the peace officer shall shall, no later than _____ hours
 26 after the arrest, prepare a declaration under penalty of perjury
 27 setting forth the facts and circumstances in support of his or her
 28 belief and file it with a magistrate, as defined in Section 808, or
 29 his or her commissioner, in the county in which the offense is
 30 alleged to have been committed or having personal jurisdiction
 31 over the defendant, requesting an order setting a higher bail. Except
 32 where the defendant is charged with an offense listed in subdivision
 33 (a) of Section 1270.1, the defendant, either personally or through
 34 his or her attorney, friend, or family member, also may make
 35 application to the magistrate for release on bail lower than that
 36 provided in the schedule of bail or on his or her own recognizance.
 37 The magistrate or commissioner to whom the application is made
 38 is authorized to set bail in an amount that he or she deems sufficient
 39 to ensure the defendant’s appearance or to ensure the protection
 40 of a victim, or family member of a victim, of domestic violence,

1 ~~and to set bail on the terms and conditions that he or she, in his or~~
 2 ~~her discretion, deems appropriate, or he or she may authorize the~~
 3 ~~defendant's release on his or her own recognizance. If, after the~~
 4 ~~application is made, no order changing the amount of bail is issued~~
 5 ~~within eight hours after booking, the defendant shall be entitled~~
 6 ~~to be released on posting the amount of bail set forth in the~~
 7 ~~applicable bail schedule. pursuant to subdivision (f) of Section~~
 8 ~~1269b imposing a condition or conditions of release.~~

9 *SEC. 10. Section 1270 of the Penal Code is repealed.*

10 ~~1270. (a) Any person who has been arrested for, or charged~~
 11 ~~with, an offense other than a capital offense may be released on~~
 12 ~~his or her own recognizance by a court or magistrate who could~~
 13 ~~release a defendant from custody upon the defendant giving bail,~~
 14 ~~including a defendant arrested upon an out-of-county warrant. A~~
 15 ~~defendant who is in custody and is arraigned on a complaint~~
 16 ~~alleging an offense which is a misdemeanor, and a defendant who~~
 17 ~~appears before a court or magistrate upon an out-of-county warrant~~
 18 ~~arising out of a case involving only misdemeanors, shall be entitled~~
 19 ~~to an own recognizance release unless the court makes a finding~~
 20 ~~on the record, in accordance with Section 1275, that an own~~
 21 ~~recognizance release will compromise public safety or will not~~
 22 ~~reasonably assure the appearance of the defendant as required.~~
 23 ~~Public safety shall be the primary consideration. If the court makes~~
 24 ~~one of those findings, the court shall then set bail and specify the~~
 25 ~~conditions, if any, whereunder the defendant shall be released.~~

26 ~~(b) Article 9 (commencing with Section 1318) shall apply to~~
 27 ~~any person who is released pursuant to this section.~~

28 *SEC. 11. Section 1270.1 of the Penal Code is repealed.*

29 ~~1270.1. (a) Except as provided in subdivision (e), before any~~
 30 ~~person who is arrested for any of the following crimes may be~~
 31 ~~released on bail in an amount that is either more or less than the~~
 32 ~~amount contained in the schedule of bail for the offense, or may~~
 33 ~~be released on his or her own recognizance, a hearing shall be held~~
 34 ~~in open court before the magistrate or judge:~~

35 ~~(1) A serious felony, as defined in subdivision (c) of Section~~
 36 ~~1192.7, or a violent felony, as defined in subdivision (c) of Section~~
 37 ~~667.5, but not including a violation of subdivision (a) of Section~~
 38 ~~460 (residential burglary).~~

1 ~~(2) A violation of Section 136.1 where punishment is imposed~~
 2 ~~pursuant to subdivision (c) of Section 136.1, Section 262, 273.5,~~
 3 ~~or 422 where the offense is punished as a felony, or Section 646.9.~~

4 ~~(3) A violation of paragraph (1) of subdivision (c) of Section 5~~
 5 ~~243.~~

6 ~~(4) A violation of Section 273.6 if the detained person — made~~
 7 ~~threats to kill or harm, has engaged in violence against, or has gone~~
 8 ~~to the residence or workplace of, the protected party.~~

9 ~~(b) The prosecuting attorney and defense attorney shall be given~~
 10 ~~a two-court-day written notice and an opportunity to be heard on~~
 11 ~~the matter. If the detained person does not have counsel, the court~~
 12 ~~shall appoint counsel for purposes of this section only. The hearing~~
 13 ~~required by this section shall be held within the time period~~
 14 ~~prescribed in Section 825.~~

15 ~~(c) At the hearing, the court shall consider evidence of past court~~
 16 ~~appearances of the detained person, the maximum — potential~~
 17 ~~sentence that could be imposed, and the danger that may be posed~~
 18 ~~to other persons if the detained person is released. In making the~~
 19 ~~determination whether to release the detained person on his or her~~
 20 ~~own recognizance, the court shall consider the potential danger to~~
 21 ~~other persons, including threats that have been made by the~~
 22 ~~detained person and any past acts of violence. The court shall also~~
 23 ~~consider any evidence offered by the detained person — regarding~~
 24 ~~his or her ties to the community and his or her ability to post bond.~~

25 ~~(d) If the judge or magistrate sets the bail in an amount that is~~
 26 ~~either more or less than the amount contained in the schedule of~~
 27 ~~bail for the offense, the judge or magistrate shall state the reasons~~
 28 ~~for that decision and shall address the issue of threats made against~~
 29 ~~the victim or witness, if they were made, in the record. This~~
 30 ~~statement shall be included in the record.~~

31 ~~(e) Notwithstanding subdivision (a), a judge or magistrate,~~
 32 ~~pursuant to Section 1269c, may, with respect to a bailable felony~~
 33 ~~offense or a misdemeanor offense of violating a domestic violence~~
 34 ~~order, increase bail to an amount exceeding that set forth in — the~~
 35 ~~bail schedule without a hearing, provided an oral or written~~
 36 ~~declaration of facts justifying the increase is presented under~~
 37 ~~penalty of perjury by a sworn peace officer.~~

38 *SEC. 12. Section 1270.2 of the Penal Code is repealed.*

39 ~~1270.2. — When a person is detained in custody on a — criminal~~
 40 ~~charge prior to conviction for want of bail, that person is entitled~~

1 ~~to an automatic review of the order fixing the amount of the bail~~
2 ~~by the judge or magistrate having jurisdiction of the offense. That~~
3 ~~review shall be held not later than five days from the time of the~~
4 ~~original order fixing the amount of bail on the original accusatory~~
5 ~~pleading. The defendant may waive this review.~~

6 *SEC. 13. Section 1275 of the Penal Code is repealed.*

7 ~~1275. (a) (1) In setting, reducing, or denying bail, a judge or~~
8 ~~magistrate shall take into consideration the protection of the public,~~
9 ~~the seriousness of the offense charged, the previous criminal record~~
10 ~~of the defendant, and the probability of his or her appearing at trial~~
11 ~~or at a hearing of the case. The public safety shall be the primary~~
12 ~~consideration. In setting bail, a judge or magistrate may consider~~
13 ~~factors such as the information included in a report prepared in~~
14 ~~accordance with Section 1318.1.~~

15 ~~(2) In considering the seriousness of the offense charged, a judge~~
16 ~~or magistrate shall include consideration of the alleged injury to~~
17 ~~the victim, and alleged threats to the victim or a witness to the~~
18 ~~crime charged, the alleged use of a firearm or other deadly weapon~~
19 ~~in the commission of the crime charged, and the alleged use or~~
20 ~~possession of controlled substances by the defendant.~~

21 ~~(b) In considering offenses wherein a violation of Chapter 6~~
22 ~~(commencing with Section 11350) of Division 10 of the Health~~
23 ~~and Safety Code is alleged, a judge or magistrate shall consider~~
24 ~~the following: (1) the alleged amounts of controlled substances~~
25 ~~involved in the commission of the offense, and (2) whether the~~
26 ~~defendant is currently released on bail for an alleged violation of~~
27 ~~Chapter 6 (commencing with Section 11350) of Division 10 of the~~
28 ~~Health and Safety Code.~~

29 ~~(c) Before a court reduces bail to below the amount established~~
30 ~~by the bail schedule approved for the county, in accordance with~~
31 ~~subdivisions (b) and (c) of Section 1269b, for a person charged~~
32 ~~with a serious felony, as defined in subdivision (c) of Section~~
33 ~~1192.7, or a violent felony, as defined in subdivision (c) of Section~~
34 ~~667.5, the court shall make a finding of unusual circumstances and~~
35 ~~shall set forth those facts on the record. For purposes of this~~
36 ~~subdivision, "unusual circumstances" does not include the fact~~
37 ~~that the defendant has made all prior court appearances or has not~~
38 ~~committed any new offenses.~~

39 *SEC. 14. Section 1275 is added to the Penal Code, to read:*

1 1275. (a) (1) In making a pretrial release or detention decision
2 pursuant to Section 1275a or 1275b, a judge or magistrate shall
3 take into consideration the protection of the public, the seriousness
4 of the offense charged, the previous criminal record of the
5 defendant, the probability of his or her appearing at trial or at a
6 hearing of the case, and the presumption of innocence. The public
7 safety, the safety of the victim, and the probability of the accused
8 appearing in court as required shall be the primary considerations.

9 (2) In considering the seriousness of the offense charged, a
10 judge or magistrate shall include consideration of the alleged
11 injury to the victim, alleged threats to the victim or a witness to
12 the crime charged, and the alleged use of a firearm or other deadly
13 weapon in the commission of the crime charged.

14 (3) It shall be the duty of the court to determine what condition
15 or conditions will ensure the safety of the community, secure the
16 defendant's appearance at trial or at a hearing of the case, and
17 facilitate pretrial release. If, pursuant to Section 1275b, the court
18 finds that no conditions will reasonably assure the defendant's
19 appearance in court or at a hearing of the court and protect public
20 safety, the court shall issue an order with findings of fact and a
21 statement explaining what condition or conditions it considered
22 and why those conditions were inadequate.

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

26 (c) In making a pretrial release decision pursuant to Section
27 1275a, the judge or magistrate shall consider the pretrial services
28 agency's risk assessment, recommendations on conditions of
29 release, and the pretrial services report in accordance with Section
30 1318.3. If a judge or magistrate's release decision is not consistent
31 with the pretrial services program's risk assessment and
32 recommendations on conditions of release, the judge or magistrate
33 shall include in its order for release a statement of the reasons.

34 (d) In making a pretrial detention decision following a detention
35 hearing pursuant to Section 1275b, a judge or magistrate shall
36 not consider the pretrial services agency's risk assessment or the
37 results of the risk assessment and shall instead determine whether
38 the person meets the description of subdivision (a) of Section
39 1275b, pursuant to Section 12 of Article 1 of the California
40 Constitution.

1 SEC. 15. Section 1275a is added to the Penal Code, to read:

2 1275a. (a) Except as provided in subdivision (f) and Section
3 1275b, at the arraignment of a person who is in custody, the judge
4 or magistrate shall, after considering the pretrial services report
5 with recommendations for conditions of release and any relevant
6 information provided by the prosecuting attorney or the defendant,
7 order the pretrial release of the person subject to a release
8 agreement under Section 1318 without further conditions, unless
9 the judge or magistrate determines that the release will not
10 reasonably assure the appearance of the person as required, the
11 safety of the victim, or public safety. If the judge or magistrate
12 releases the person subject to a release agreement under Section
13 1318 without further conditions, the reasons for that decision shall
14 be stated in the record and included in the court's minutes.

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

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

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

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

36 (3) A person for whom any nonmonetary condition or
37 combination of conditions is imposed shall not be required to pay
38 for those conditions.

39 (c) (1) If, after considering the pretrial services report with
40 recommendations for conditions of release and any relevant

1 information provided by the prosecuting attorney or the defendant,
2 the judge or magistrate determines that the release described in
3 subdivision (b) will not reasonably assure the appearance of the
4 person as required, the judge or magistrate shall set monetary
5 bail as determined pursuant to paragraph (2). The court may also
6 order monetary bail in combination with the least restrictive
7 nonmonetary condition or combination of nonmonetary conditions
8 that the judge or magistrate determines will reasonably assure the
9 appearance of the person as required, the safety of the victim, and
10 public safety.

11 (2) (A) Monetary bail shall be set at the least restrictive level
12 necessary to assure the appearance of the defendant in court as
13 required. In setting monetary bail, the court shall conduct an
14 inquiry into the person's ability to pay and shall make a finding
15 that the defendant has the present ability to pay the amount of
16 monetary bail set without substantial hardship.

17 (B) For the purposes of this paragraph, the following terms
18 have the following meanings:

19 (i) "Ability to pay" means the defendant's present ability to pay
20 a specified amount without borrowing money, obtaining a loan,
21 or paying for a bond.

22 (ii) "Substantial hardship" means a significant infringement
23 on a defendant's ability to meet the basic necessities of life for
24 himself or herself and his or her dependents. These basic
25 necessities include, but are not limited to, food, shelter,
26 communication, clothing, transportation, medical and dental care,
27 child care, and education.

28 (3) A judge or magistrate shall not set monetary bail in an
29 amount that results in the pretrial detention of a defendant because
30 of his or her inability to pay.

31 (d) If the defendant has not retained counsel, the court shall
32 offer to appoint counsel to represent him or her at his or her
33 arraignment. If the defendant requests that counsel be appointed,
34 or if the court finds that the defendant is not competent to represent
35 himself or herself, the court shall appoint counsel.

36 (e) Except as provided in subdivision (f), if the pretrial services
37 report with recommendations for conditions of release is not
38 available at the time the court makes a pretrial detention
39 determination under this section, the court shall, consistent with
40 this section, release the person on the least restrictive condition

1 or conditions that will reasonably assure the appearance of the
2 person in court, the safety of the victim, and public safety, including
3 without further conditions, if appropriate. The fact that the court
4 has not received the report at the time of release consideration
5 shall not preclude that release.

6 (f) (1) For a defendant charged with a violent felony, as defined
7 in subdivision (c) of Section 667.5, the pretrial services agency
8 shall conduct a pretrial risk assessment and prepare a pretrial
9 services report only if the defendant, either directly or through
10 counsel if the person is represented by counsel, requests a pretrial
11 risk assessment and report.

12 (2) If the defendant requests a pretrial risk assessment, the
13 assessment and report shall be completed within _____, and within
14 _____ the defendant shall be considered for release pursuant to
15 subdivisions (a), (b), and (c).

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

21 SEC. 16. Section 1275b is added to the Penal Code, to read:

22 1275b. (a) A prosecuting attorney may file a motion with the
23 court at any time, including any time before or after a defendant's
24 release pursuant to 1269b, seeking the pretrial detention of the
25 defendant in any of the following circumstances:

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

29 (2) The defendant is charged with a felony offense involving
30 acts of violence on another person, or a felony sexual assault
31 offense on another person and the prosecuting attorney alleges
32 all of the following:

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

34 (B) There is no condition or combination of conditions of
35 pretrial release that would reasonably assure the physical safety
36 of another person or persons.

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

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

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

2 (B) The defendant has threatened another with great bodily
3 harm.

4 (C) There is no condition or combination of conditions of
5 pretrial release that would reasonably assure the safety of the
6 person who has been threatened.

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

9 (b) (1) If a motion for pretrial detention is filed pursuant to
10 subdivision (a), a hearing shall be held before a magistrate or
11 judge to determine whether to release the defendant pending trial
12 unless the hearing is waived by the defendant, either directly or,
13 if he or she is represented by counsel, through counsel. The defense
14 attorney shall be given notice and a reasonable opportunity to be
15 heard on the matter. If the defendant does not have counsel, the
16 court shall appoint counsel. The hearing shall be held within the
17 time period prescribed by Section 825, unless the hearing is held
18 after arraignment, in which case the hearing shall be held within
19 48 hours, or unless waived by the defendant either directly or, if
20 represented by counsel, through counsel.

21 (2) If the defendant waives a hearing under this section and a
22 pretrial risk assessment was conducted and a pretrial services
23 report was prepared, they shall not be provided to the parties
24 named in paragraph (2) of subdivision (f) and the defendant shall
25 be ordered detained.

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

29 (d) In determining whether the facts are evident or the
30 presumption great as specified in paragraph (1), (2), or (3) of
31 subdivision (a), the finding of an indictment or a holding order
32 shall not add to the strength of the proof or create a presumption
33 that the facts are evident or the presumption great.

34 (e) In making the determination whether there is a substantial
35 likelihood that the defendant's release would result in great bodily
36 harm to others, as specified in subparagraph (C) of paragraph
37 (2) of subdivision (a), or whether there is a substantial likelihood
38 that the defendant would carry out the threat of great bodily harm
39 if released, as specified in subparagraph (D) of paragraph (3) of
40 subdivision (a), the court shall consider all of the following:

1 (1) If any condition or combination of conditions of pretrial
2 release would reasonably assure the physical safety of another
3 person or persons from great bodily harm.

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

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

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

13 (1) The protection of the public.

14 (2) The safety of the victim.

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

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

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

18 (6) The probability of the defendant appearing at the trial or
19 hearing of the case.

20 (7) The presumption of innocence and the presumption of release
21 pending trial.

22 (g) If, after considering any relevant evidence provided by the
23 prosecuting attorney or the defendant, and if no condition or
24 combination of conditions would reasonably assure the safety of
25 another person or persons from great bodily harm, the court shall
26 order the person detained pending trial only if, pursuant to Section
27 12 of Article 1 of the Constitution, the court finds that the defendant
28 meets one of the following descriptions:

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

31 (2) The defendant has been charged with a felony offense
32 involving an act of violence on another person, or a felony sexual
33 assault offense on another person, the facts are evident or the
34 presumption great, and the court finds based upon clear and
35 convincing evidence that there is a substantial likelihood the
36 person's release would result in great bodily harm to another
37 person or persons.

38 (3) The defendant has been charged with a felony offense, the
39 facts are evident or the presumption great, and the court finds
40 based on clear and convincing evidence that the person has

1 threatened another with great bodily harm in the charged case
2 and that there is a substantial likelihood that the person would
3 carry out the threat if released.

4 (h) In a detention order issued under paragraph (g), the court
5 shall include findings of fact and a statement of the reasons for
6 the detention, including the specific likelihood of great bodily
7 harm, if applicable, and why no condition or conditions could
8 reasonably mitigate that likelihood.

9 (i) If the court does not order the pretrial detention of the person
10 at the conclusion of the hearing under this section, pretrial services
11 shall conduct a risk assessment and prepare a pretrial services
12 report with recommendations for conditions of release and the
13 court shall order the release of the person, with or without
14 conditions, pursuant to Section 1275a.

15 SEC. 17. Section 1275.1 of the Penal Code is amended to read:

16 1275.1. (a) ~~Bail~~, Monetary bail, pursuant to this chapter, shall
17 not be accepted unless a judge or magistrate finds that no portion
18 of the consideration, pledge, security, deposit, or indemnification
19 paid, given, made, or promised for its execution was feloniously
20 obtained.

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

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

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

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

38 (c) Once a magistrate or judge has determined that probable
39 cause exists, as provided in subdivision (b), a defendant bears the
40 burden by a preponderance of the evidence to show that no part

1 of any consideration, pledge, security, deposit, or indemnification
2 paid, given, made, or promised for its execution was obtained by
3 felonious means. Once a defendant has met such burden, the
4 magistrate or judge shall release the hold previously ordered and
5 the defendant shall be released under the authorized amount of
6 bail.

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

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

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

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

22 (h) Nothing in this code shall deny the right of the defendant,
23 either personally or through his or her attorney, bail agent licensed
24 by the Department of Insurance, admitted surety insurer licensed
25 by the Department of Insurance, friend, or member of his or her
26 family from making an application to the magistrate or judge for
27 the release of the defendant on *monetary* bail.

28 (i) The bail of any defendant found to have willfully misled the
29 court regarding the source of bail may be increased as a result of
30 the willful ~~misrepresentation~~ *misrepresentation, so long as the*
31 *amount conforms with subdivision (c) of Section 1275a.* The
32 ~~misrepresentation may be a factor considered in any subsequent~~
33 bail hearing.

34 (j) If a defendant has met the burden under subdivision (c), and
35 a defendant will be released from custody upon the issuance of a
36 bail bond issued pursuant to authority of Section 1269 ~~or 1269b~~
37 by any admitted surety insurer or any bail agent, approved by the
38 Insurance Commissioner, the magistrate or judge shall vacate the
39 holding order imposed under subdivision (b) upon the condition
40 that the consideration for the bail bond is approved by the court.

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

6 SEC. 18. Section 1277 of the Penal Code is amended to read:

7 1277. When the defendant has been held to answer upon an
 8 examination for a public offense, ~~the~~ pretrial release pursuant to
 9 Section 1275a or admission to bail may be by the magistrate by
 10 whom he is so held, or by any magistrate who has power to issue
 11 the writ of habeas corpus.

12 SEC. 19. Section 1278 of the Penal Code is amended to read:

13 1278. (a) ~~Bail is~~ (1) Upon a finding that monetary bail should
 14 be set pursuant to subdivision (c) of Section 1275a, the defendant
 15 may execute an unsecured appearance bond or a secured bond in
 16 the amount specified by the court. The court may require, and the
 17 defendant may request, that an unsecured appearance bond be
 18 signed by uncompensated third parties.

19 (2) For the purposes of this subdivision, “unsecured appearance
 20 bond” means an order to release a person upon his or her promise
 21 to appear in court and his or her unsecured promise to pay an
 22 amount of money, specified by the court, if he or she fails to appear
 23 as promised.

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

28 An order having been made on the ___ day of ___, 20___, by
 29 ___, a judge of the ___ Court of ___ County, that ___ be held
 30 to answer upon a charge of (stating briefly the nature of the
 31 offense), upon which he or she has been admitted to bail in the
 32 sum of ___ dollars (\$___); we, ___ and ___, of ___ (stating
 33 their place of residence and occupation), hereby undertake that the
 34 above-named ___ will appear and answer any charge in any
 35 accusatory pleading based upon the acts supporting the charge
 36 above mentioned, in whatever court it may be prosecuted, and will
 37 at all times hold himself or herself amenable to the orders and
 38 process of the court, and if convicted, will appear for
 39 pronouncement of judgment or grant of probation, or if he or she
 40 fails to perform either of these conditions, that we will pay to the

1 people of the State of California the sum of _____ dollars (\$ _____)
 2 (inserting the sum in which the defendant is admitted to bail). If
 3 the forfeiture of this bond be ordered by the court, judgment may
 4 be summarily made and entered forthwith against the said (naming
 5 the sureties), and the defendant if he or she be a party to the bond,
 6 for the amount of their respective undertakings herein, as provided
 7 by Sections 1305 and

1306. 8 (b)

9 (c) Every undertaking of bail shall contain the bail agent license
 10 number of the owner of the bail agency issuing the undertaking
 11 along with the name, address, and phone number of the agency,
 12 regardless of whether the owner is an individual, partnership, or
 13 corporation. The bail agency name on the undertaking shall be a
 14 business name approved by the Insurance Commissioner for use
 15 by the bail agency owner, and be so reflected in the public records
 16 of the commissioner. The license number of the bail agent
 17 appearing on the undertaking shall be in the same type size as the
 18 name, address, and phone number of the agency.

19 *SEC. 20. Section 1284 of the Penal Code is amended to read:*

20 **1284. When the offense charged is not punishable with death,**
 21 the officer serving the bench warrant must, if required, take the
 22 defendant before a magistrate in the county in which it is issued,
 23 or in which he is arrested, for the purpose of ~~giving bail—a pretrial~~
 24 *release hearing*. If the defendant appears before such magistrate
 25 ~~without the bench warrant having been served upon him, the~~
 26 magistrate shall deliver him into the custody of the sheriff for the
 27 purpose of immediate booking and the recording of identification
 28 data, whereupon the sheriff shall deliver the defendant back before
 29 the magistrate for the purpose of ~~giving bail—a pretrial release~~
 30 *hearing*.

31 *SEC. 21. Section 1288 of the Penal Code is repealed.*

32 ~~1288. The provisions contained in sections 1279, 1280, 1280a~~
 33 ~~and 1281, in relation to bail before indictment, apply to bail after~~
 34 ~~indictment.~~

35 *SEC. 22. Section 1289 of the Penal Code is repealed.*

36 ~~1289. After a defendant has been admitted to bail upon an~~
 37 ~~indictment or information, the Court in which the charge is pending~~
 38 ~~may, upon good cause shown, either increase or reduce the amount~~
 39 ~~of bail. If the amount be increased, the Court may order the~~
 40 ~~defendant to be committed to actual custody, unless he give bail~~

1 ~~in such increased amount. If application be made by the defendant~~
 2 ~~for a reduction of the amount, notice of the application must be~~
 3 ~~served upon the District Attorney.~~

4 *SEC. 23. Section 1289 is added to the Penal Code, to read:*

5 *1289. (a) After a defendant has been released from custody*
 6 *upon an indictment or information pursuant to Section 1275a, the*
 7 *court in which the charge is pending may, upon a change in*
 8 *circumstances, amend the release order to change the conditions*
 9 *of release, including the amount of any monetary bail. If, upon*
 10 *motion of the prosecuting attorney, the amount of monetary bail*
 11 *is increased, the court shall set bail in accordance with subdivision*
 12 *(c) of Section 1275a. If the defendant requests a change in the*
 13 *conditions of release, notice of the request shall be served upon*
 14 *the prosecuting attorney.*

15 *(b) A defendant who has violated the terms or conditions of*
 16 *release ordered by the court may be held in contempt of court*
 17 *pursuant to Title 5 (commencing with Section 1209) of Part 3 of*
 18 *the Code of Civil Procedure upon motion of the prosecuting*
 19 *attorney. An order of contempt shall not issue unless, after a*
 20 *hearing, the court finds both of the following:*

21 *(1) That there is either of the following:*

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

24 *(B) Evidence that the defendant has violated any condition of*
 25 *release.*

26 *(2) That either of the following:*

27 *(A) There is no condition or combination of conditions of release*
 28 *that would reasonably assure that the defendant will not flee or*
 29 *pose a danger to any other person or the community.*

30 *(B) The defendant is unlikely to abide by any condition or*
 31 *combination of conditions of release.*

32 *(c) If the defendant has not retained counsel, the court shall*
 33 *offer to appoint counsel for purposes of this section. If the*
 34 *defendant requests that counsel be appointed, or if the court finds*
 35 *that the defendant is not competent to represent himself or herself,*
 36 *the court shall appoint counsel.*

37 *SEC. 24. Section 1295 of the Penal Code is amended to read:*

38 *1295. (a) The defendant, or any other person, at any time after*
 39 *an order admitting defendant to bail or after the arrest and booking*
 40 *of a defendant for having committed a misdemeanor, pursuant to*

1 *Section 1275a*, instead of giving bail may deposit, with the clerk
 2 of the court in which the defendant is held to answer or notified
 3 to appear for arraignment, the sum mentioned in the order or, if
 4 no order, in the schedule of bail previously fixed by the judges of
 5 the court, or a percentage of the sum mentioned in the order, not
 6 to exceed 10 percent, and, upon delivering to the officer in whose
 7 custody defendant is a certificate of the deposit, the defendant must
 8 shall be discharged from custody.

9 (b) Where more than one deposit is made with respect to any
 10 charge in any accusatory pleading based upon the acts supporting
 11 the original charge as a result of which an earlier deposit was made,
 12 the defendant shall receive credit in the amount of any earlier
 13 deposit.

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

16 *SEC. 25. Section 1318 of the Penal Code is amended to read:*

17 1318. ~~(a)~~ The defendant shall not be released from custody
 18 under an own recognizance *with no further conditions, or released*
 19 *with a further condition or conditions*, until the defendant files
 20 with the clerk of the court or other person authorized to accept bail
 21 a signed release agreement which
 includes: 22 (1)

23 (a) The defendant's promise to appear at all times and places,
 24 as ordered by the court or magistrate and as ordered by any court
 25 in which, or any magistrate before whom the charge is subsequently
 26 pending

27 (2)

28 (b) The defendant's promise to obey all reasonable conditions
 29 imposed by the court or
 magistrate. 30 (3)

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

33 (4)

34 (d) Agreement by the defendant to waive extradition if the
 35 defendant fails to appear as required and is apprehended outside
 36 of the State of California.

37 (5)

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

1 *SEC. 26. Section 1318.1 of the Penal Code is repealed.*

2 ~~1318.1. (a) A court, with the concurrence of the board of~~
 3 ~~supervisors, may employ an investigative staff for the purpose of~~
 4 ~~recommending whether a defendant should be released on his or~~
 5 ~~her own recognizance.~~

6 ~~(b) Whenever a court has employed an investigative staff~~
 7 ~~pursuant to subdivision (a), an investigative report shall be prepared~~
 8 ~~in all cases involving a violent felony, as described in subdivision~~
 9 ~~(c) of Section 667.5, or a felony in violation of subdivision (a) of~~
 10 ~~Section 23153 of the Vehicle Code, recommending whether the~~
 11 ~~defendant should be released on his or her own recognizance. The~~
 12 ~~report shall include all of the following:~~

13 ~~(1) Written verification of any outstanding warrants against the~~
 14 ~~defendant.~~

15 ~~(2) Written verification of any prior incidents where the~~
 16 ~~defendant has failed to make a court appearance.~~

17 ~~(3) Written verification of the criminal record of the defendant.~~

18 ~~(4) Written verification of the residence of the defendant during~~
 19 ~~the past year.~~

20 ~~After the report is certified pursuant to this subdivision, it shall~~
 21 ~~be submitted to the court for review, prior to a hearing held~~
 22 ~~pursuant to Section 1319.~~

23 ~~(c) The salaries of the staff are a proper charge against the~~
 24 ~~county.~~

25 *SEC. 27. Section 1318.1 is added to the Penal Code, to read:*

26 *1318.1. (a) Each county shall establish a pretrial services*
 27 *agency, which shall be responsible for gathering information about*
 28 *newly arrested defendants, conducting risk assessments on pretrial*
 29 *defendants, preparing individually tailored recommendations to*
 30 *the court regarding release options and conditions, and providing*
 31 *pretrial services and supervision to defendants on pretrial release.*
 32 *Pretrial services agencies shall do all of the following:*

33 *(1) Use methods that research has proven to be effective in*
 34 *reducing unnecessary detention while assuring court appearance*
 35 *and the safety of the community during the pretrial stage.*

36 *(2) Assist defendants on pretrial release in remaining free from*
 37 *custody and to employ the least restrictive interventions and*
 38 *practices.*

39 *(3) Ensure that services provided are culturally and*
 40 *linguistically competent.*

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

5 (b) Each county shall develop a pretrial services agency. The
6 agency shall follow the standards and guidelines set by _____
7 pursuant to Sections 1318.2 and 1318.3, as well as current best
8 practices and standards for pretrial services agencies and
9 professionals.

10 (c) Pretrial services agencies shall make every effort to assist
11 pretrial defendants with complying with their conditions of release
12 and to address noncompliance with pretrial services requirements
13 administratively.

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

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

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

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

25 (f) When ordered by the court, a pretrial service agency shall
26 monitor the compliance of released defendants with ordered release
27 conditions through appropriate supervision. In supervising pretrial
28 defendants, pretrial services agencies shall utilize the least
29 restrictive interventions and practices to promote compliance with
30 court-ordered conditions.

31 SEC. 28. Section 1318.2 is added to the Penal Code, to read:

32 1318.2. (a) The _____ shall do all of the following:

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

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

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

39 (2) Provide technical assistance to counties in improving their
40 pretrial release and detention policies and procedures and in

1 promoting compliance by counties with the requirements of state
2 law relating to pretrial release and detention.

3 (3) (A) No later than _____, select a pretrial risk assessment
4 tool that meets the requirements of subdivision (b) of Section
5 1318.3 and make that tool available to counties.

6 (B) Analyze new pretrial risk assessment tools as they become
7 available and make recommendations for the replacement of the
8 existing pretrial risk assessment tool.

9 (4) No later than _____, the _____ shall develop a plan to
10 provide technical assistance to counties regarding the
11 implementation of the pretrial risk assessment selected pursuant
12 to paragraph (3).

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

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

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

20 (1) Collect data related to pretrial release, pretrial detention,
21 and pretrial decisionmaking.

22 (2) Survey pretrial services resources across state and local
23 governments.

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

26 (4) Enter partnerships or joint agreements with organizations
27 and agencies from this and other jurisdictions to perform needed
28 research and analysis.

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

32 (6) Provide training and assistance on pretrial release to judges,
33 prosecutors, defense attorneys, pretrial services agencies, jail
34 staff, and law enforcement agencies.

35 SEC. 29. Section 1318.3 is added to the Penal Code, to read:

36 1318.3. (a) For purposes of this section, the following terms
37 have the following meanings:

38 (1) "Pretrial risk assessment tool" is the objective, standardized
39 analysis of information about an arrested person that accurately
40 measures the person's probability of appearing in court as required

1 and the person's potential risk of criminal conduct while on pretrial
2 release pending trial.

3 (2) "Pretrial services report" is a report containing the results
4 of the pretrial risk assessment tool and the pretrial services
5 agency's recommendations on conditions of release.

6 (3) "Validated" means developed through peer-reviewed
7 research and statistical analysis and proven to produce results
8 that are accurate, based on the characteristics of the population
9 being assessed, in predicting the likelihood that a person will fail
10 to appear for trial or act as a threat to the safety of the community
11 during the period of time between the initial arrest and the
12 subsequent trial for the offense.

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

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

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

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

23 (4) It shall be regularly validated and adjusted, as appropriate,
24 to ensure that the assessment instrument is equally accurate across
25 all racial groups, ethnic groups, and genders. The validation study
26 shall include testing for predictive bias, and disparate results by
27 race, ethnicity, and gender. The tool shall be adjusted to ensure
28 accuracy and to minimize disparate results.

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

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

36 (7) It shall not require an in-person interview of an arrested
37 person.

38 (8) It shall distinguish between failure to appear and willful
39 failure to appear.

1 (c) If, prior to the effective date of the act that added this section,
2 a county is using a pretrial risk assessment tool, the county may
3 elect to continue using that pretrial risk assessment tool, provided
4 the tool meets the requirements of subdivision (b). For counties
5 that elect to continue use of an existing pretrial risk assessment
6 tool under this subdivision, the _____ shall review the tool to
7 determine whether it meets the requirements of subdivision (b).
8 The _____ shall also review the county's standards for the results
9 produced using the tool to determine whether it meets the
10 requirements contained in the policies developed pursuant to
11 subdivision (f). The county's pretrial risk assessment tool shall be
12 in compliance with the requirements in subdivisions (b) and (g)
13 by _____, as confirmed by the _____. If the county's pretrial risk
14 assessment tool is not in compliance by that date, the county shall
15 use the pretrial risk assessment tool selected by the _____ pursuant
16 to Section 1318.2.

17 (d) Pursuant to Sections 1269b and 1275a, the pretrial services
18 agency shall conduct a pretrial risk assessment using the pretrial
19 risk assessment tool selected by _____ pursuant to Section 1318.2
20 or the pretrial risk assessment tool reviewed pursuant to
21 subdivision (c).

22 (e) (1) The pretrial services agency shall prepare a pretrial
23 services report following the administration of the pretrial risk
24 assessment tool that contains the results of the pretrial risk
25 assessment tool, the offense charged, and a recommendation for
26 release under Section 1318 without further conditions or release
27 subject to the least restrictive further condition or conditions that
28 will reasonably assure the arrested person's appearance in court
29 as required and public safety.

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

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

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

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

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

1 (3) Validation of risk assessment tools.

2 (4) Guidelines for collection of data.

3 (g) Judges, magistrates, and commissioners who make pretrial
4 release decisions shall be trained in the proper use of the
5 information contained in a pretrial services report, including the
6 results of the risk assessment.

7 (h) Pretrial services staff who administer pretrial risk
8 assessment tools shall be trained in conducting the pretrial risk
9 assessment tool and interpreting the results.

10 (i) The Board of State and Community Corrections, in
11 consultation with the_____, shall develop a plan that establishes
12 statewide requirements for counties relating to annual reporting
13 of pretrial release and detention information. At a minimum, the
14 plan shall require counties to submit the following data,
15 disaggregated by race or ethnicity and gender, annually:

16 (1) The percentage of individuals released pretrial.

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

19 (3) The percentage of individuals released pretrial who commit
20 new crimes while on pretrial release and the percentage of those
21 released who commit new violent crimes while on pretrial release.

22 (4) The rate of judicial concurrence with recommended
23 conditions of release.

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

35 (k) Each county shall make publicly available its risk assessment
36 tool guidelines, factors, weights, studies, data upon which
37 validation studies rely, and information about how a risk
38 assessment tool was renormed.

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

4 SEC. 30. Section 1319 of the Penal Code is repealed.

5 ~~1319. (a) No person arrested for a violent felony, as described~~
 6 ~~in subdivision (c) of Section 667.5, may be released on his or her~~
 7 ~~own recognizance until a hearing is held in open court before the~~
 8 ~~magistrate or judge, and until the prosecuting attorney is given~~
 9 ~~notice and a reasonable opportunity to be heard on the matter. In~~
 10 ~~all cases, these provisions shall be implemented in a manner~~
 11 ~~consistent with the defendant's right to be taken before a magistrate~~
 12 ~~or judge without unreasonable delay pursuant to Section 825.~~

13 ~~(b) A defendant charged with a violent felony, as described in~~
 14 ~~subdivision (c) of Section 667.5, shall not be released on his or~~
 15 ~~her own recognizance where it appears, by clear and convincing~~
 16 ~~evidence, that he or she previously has been charged with a felony~~
 17 ~~offense and has willfully and without excuse from the court failed~~
 18 ~~to appear in court as required while that charge was pending. In~~
 19 ~~all other cases, in making the determination as to whether or not~~
 20 ~~to grant release under this section, the court shall consider all of~~
 21 ~~the following:~~

22 ~~(1) The existence of any outstanding felony warrants on the~~
 23 ~~defendant.~~

24 ~~(2) Any other information presented in the report prepared~~
 25 ~~pursuant to Section 1318.1. The fact that the court has not received~~
 26 ~~the report required by Section 1318.1, at the time of the hearing~~
 27 ~~to decide whether to release the defendant on his or her own~~
 28 ~~recognizance, shall not preclude that release.~~

29 ~~(3) Any other information presented by the prosecuting attorney.~~

30 ~~(c) The judge or magistrate who, pursuant to this section, grants~~
 31 ~~or denies release on a person's own recognizance, within the time~~
 32 ~~period prescribed in Section 825, shall state the reasons for that~~
 33 ~~decision in the record. This statement shall be included in the~~
 34 ~~court's minutes. The report prepared by the investigative staff~~
 35 ~~pursuant to subdivision (b) of Section 1318.1 shall be placed in~~
 36 ~~the court file for that particular matter.~~

37 SEC. 31. Section 1319.5 of the Penal Code is repealed.

38 ~~1319.5. (a) No person described in subdivision (b) who is~~
 39 ~~arrested for a new offense may be released on his or her own~~

1 ~~recognizance until a hearing is held in open court before the~~
2 ~~magistrate or judge.~~

3 ~~(b) Subdivision (a) shall apply to the following:~~

4 ~~(1) Any person who is currently on felony probation or felony~~
5 ~~parole.~~

6 ~~(2) Any person who has failed to appear in court as ordered,~~
7 ~~resulting in a warrant being issued, three or more times over the~~
8 ~~three years preceding the current arrest, except for infractions~~
9 ~~arising from violations of the Vehicle Code, and who is arrested~~
10 ~~for any of the following offenses:~~

11 ~~(A) Any felony offense.~~

12 ~~(B) Any violation of the California Street Terrorism~~
13 ~~Enforcement and Prevention Act (Chapter 11 (commencing with~~
14 ~~Section 186.20) of Title 7 of Part 1).~~

15 ~~(C) Any violation of Chapter 9 (commencing with Section 240)~~
16 ~~of Title 8 of Part 1 (assault and battery).~~

17 ~~(D) A violation of Section 484 (theft).~~

18 ~~(E) A violation of Section 459 (burglary).~~

19 ~~(F) Any offense in which the defendant is alleged to have been~~
20 ~~armed with or to have personally used a firearm.~~

21 *SEC. 32. If the Commission on State Mandates determines that*
22 *this act contains costs mandated by the state, reimbursement to*
23 *local agencies and school districts for those costs shall be made*
24 *pursuant to Part 7 (commencing with Section 17500) of Division*
25 *4 of Title 2 of the Government Code.*