

The background features a large, faint seal of the Judicial Council of California. The seal is circular and contains the text "JUDICIAL COUNCIL OF CALIFORNIA" around the perimeter and "1926" at the bottom. In the center of the seal is a figure holding a scale of justice and a sword, with a banner below it.

# **SB-10 Pretrial Release or Detention: Pretrial Services**

**Update to the Judicial Council**

**September 21, 2018**

# Presenters

- Hon. Lisa R. Rodriguez, Pretrial Detention Reform (PDR) Workgroup Co-Chair and Superior Court of San Diego County
- Hon. J. Richard Couzens, Superior Court of Placer County (Ret.)
- Ms. Shelley Curran, Director, Criminal Justice Services



# PDR Workgroup

- Year-long process of intensive study and analysis with presentations by over 40 speakers.
- Consistent Message from all:

*Current system is not safe and not fair*



# PDR Recommendation #1

## Implement a Robust Risk-Based Pretrial Assessment and Supervision System to Replace the Current Monetary Bail System

- California's current pretrial and release bases a person's liberty on available financial resources rather than the risk posed to public safety.



# PDR Recommendation #4

## Use a Validated Pretrial Risk Assessment Tool

- Informed pretrial determinations.
- Court needs information to fashion appropriate conditions or terms of pretrial release.
- Judicial officers remain the final authority in making release or detention decisions.



# PDR Recommendation #9

## Deliver Consistent and Comprehensive Education

- Judges, court staff, local justice system partners, and the community must be educated on the development and implementation of a pretrial release and supervision system.
- There should be continuing education regarding both implicit and explicit bias to ensure that the pretrial system or assessment tools do not perpetuate bias.



# PDR Recommendation #10

## Adopt a New Framework of Legislation and Rules of Court to Implement These Recommendations

- A sustainable structure can only be built on a solid foundation.
- New system must not be grafted onto the current complex statutory framework of monetary bail.



# SB 10 Legislation

- PDR report served as the cornerstone for the new law
- Recommendations clearly informed the legislation
- Maintains judicial discretion and ensures due process





# SB 10 – Final Legislation

Created categories of offenses and risk levels

- Different levels of review
- Move toward greater scrutiny as seriousness increased
- Detention based on risk, not lack of money

Eliminated cash bail or bail bonds

- Low risk offenders can be released, regardless of financial resources
- High risk offenders can be detained, regardless of financial resources

Detention based on assessment tool, investigation by Pretrial Assessment Services (PAS), and evidentiary hearing



# SB-10 – Final Legislation

## Misdemeanor Charges — No Pretrial Assessment Services (PAS) Investigation

- Requires release within 12 hours of booking
- Some exceptions for domestic violence, stalking, and other serious factors



# SB-10 – Final Legislation

Felony Charges — Prearraignment Review

Low Risk Defendants

- Released by PAS within 24 hours of booking on own recognizance
  - May impose conditions
  - Some exceptions for serious factors



# SB-10 – Final Legislation

Felony Charges — Prearraignment Review

Medium Risk Defendants

- Prearraignment OR or supervised release by PAS
- Exclusions from review set by statute, state rule and local court rules



# SB-10 – Final Legislation

## Prearraignment Review by Court

- Option of local court
- Broader scope of defendants (some exclusions)
- Local court may authorize SJO's
- Release standard the same as PAS



# SB-10 – Final Legislation

## Felony Charges —Reviewed At Arraignment

- All cases subject to review, including:
  - High Risk Defendants
    - Defendants charged with a serious or violent felony
    - Defendants pending trial or sentencing in a felony
  - Released pretrial unless the prosecutor requests a Preventive Detention Hearing



# Preventive Detention Hearing

- Conducted by a judicial officer
- Held within 3 court days if defendant is in custody
- Right to counsel and to appointed counsel if indigent
- Victim given notice and opportunity to be heard
- Findings must be stated on the record



# Preventive Detention Hearing

- Rebuttable presumption of detention for specified crimes
- Evidence
  - Statements of defendant and victim
  - Testimony of defendant
  - Offers of proof and argument of counsel
  - Reliable hearsay





# Standard for Pretrial Detention

PC 1320.20 (d)(1): At the detention hearing, the court may order preventive detention of the defendant pending trial or other hearing only if the detention is permitted under the United States Constitution and under the California Constitution, and the court determines by clear and convincing evidence that no nonmonetary condition or combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the defendant in court as required. The court shall state the reasons for ordering preventive detention on the record.



# How SB 10 Addresses Bias

- Judicial Council directed to develop rules of court and forms to, “address the identification and mitigation of any implicit bias in risk assessment instruments”
- Validated risk assessment tool “**shall minimize bias**” – PC § 1320.7(k)
- Board of State and Community Corrections (BSCC) directed to contract for an independent evaluation of SB10 and its impact on race, ethnicity, gender and income level by 2024.



# Responsibilities of the Judicial Council

- Adopt various rules of court, including:
  - Proper use of risk assessment information.
  - Validation of risk assessment tools and identification and mitigation of implicit bias in tools.
  - Standards for review, release, and detention.
- Rules presented to Judicial Council by the Criminal Law Advisory Committee.



# Responsibilities of the Judicial Council

- Compile and maintain a list of risk assessment tools.
- The trial courts, in consultation with the pretrial assessment services, will choose from this list.
- Appoint a panel of subject matter experts and judicial officers to designate risk levels of risk assessment tools.
  - Panel must include a person with expertise on the potential impact of bias in risk assessment instruments.



# Responsibilities of the Judicial Council

- Judicial Training

- CJER will update education products for judicial officers and court staff by October 2019, including:

- Live courses
- Videos and Online Courses
- Webinars and Podcasts
- Bench Books and Job Aids

- Regional Meetings

- Hosted by the JCC and CPOC
- Judges, court staff, probation, and other local justice system partners.
- Discuss the new law, continue to develop county implementation plans, exchange best practices with other counties.



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# Responsibilities of the Judicial Council

- Collect Data/Submit Annual Reports
  - Identify and define the minimum required data to be submitted by the trial courts.
  - Collect and analyze data.
  - Submit annual reports to the Legislature.



# Responsibilities of the Judicial Council

- Allocate Funds for Pretrial Assessment Services to the Trial Courts
- Funds will be allocated after consultation with stakeholders including the Chief Probation Officers of CA and employee representatives.



# SB 10 FY 18-19 Funding

- \$15 million to fund start-up activities for implementation of pretrial reform
  - Chief Probation Officers of California
  - Judicial Council
- Development of protocols and rules of court
- Technology Infrastructure
- Training, administrative activities, and other necessary activities





# Trial Court Support

- Assist in the development of local rules of court, as needed.
- Sample contracts for provision of pretrial assessment services.
- Regular updates to trial court leadership, as requested.
- Legal, Training, and Technical Assistance.
- Webpage
  - Public information related to the implementation of SB 10.
  - FAQs
  - Infographics
  - Future reports on the legislation



# Justice System Partner Ongoing Collaboration

- Chief Probation Officers of California
- California State Sheriffs' Association
- California Public Defenders Association
- California District Attorneys Association



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# Questions?



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